IIROC OCRCVM
Investment Industry Regulatory Organization of Canada
Organisme canadien de réglementation du commerce des valeurs mobilières

IIROC Response to the Canadian Securities Administrators Consultation on the Self-Regulatory Organization Framework

October 22, 2020

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Glossary

Access to Advice	*Access to Advice Survey*, (The Strategic Counsel and IIROC, January 2020)
AMF	Autorité des marchés financiers
CIPF	Canadian Investor Protection Fund
CSA	Canadian Securities Administrators
CSF	Chambre de la sécurité financière
Deloitte Assessment	*Assessment of Benefits and Costs of Self-Regulatory Organization Consolidation* (Deloitte LLP, July 2020)
ETFs	Exchange-traded funds
Evolution of Advice	*Enabling the Evolution in Advice in Canada* (IIROC and Accenture, March 2019)
FINRA	Financial Industry Regulatory Authority, Inc.
IDA	Investment Dealers Association of Canada
IIROC	Investment Industry Regulatory Organization of Canada
IIROC Upgrade Rule	IIROC Dealer Member Rule 18.7 requires individuals qualified to conduct mutual funds business only to complete additional proficiency and training requirements within 270 days and 18 months, respectively, from the date they are initially approved by IIROC
IIROC's Proposal	*Improving Self-Regulation for Canadians, Consolidating the Investment Industry Regulatory Organization of Canada and the Mutual Fund Dealers Association of Canada* (IIROC, June 2020)
MFDA	Mutual Fund Dealers Association of Canada
OEO	Order-execution-only
OBSI	Ombudsman for Banking Services and Investments
RS	Market Regulation Services Inc.
SRO	Self-regulatory organization
Tracking Survey	*Investor Awareness Tracking Survey* (The Strategic Counsel and IIROC, May 2020)

Introduction

The Investment Industry Regulatory Organization of Canada (**IIROC**) applauds the Canadian Securities Administrators (**CSA**) for their leadership in exploring ways to improve the self-regulatory model in Canada. The CSA's review of the regulatory framework governing IIROC and the Mutual Fund Dealers Association of Canada (**MFDA**) presents an immediate opportunity to evolve the self-regulatory model and increase the value it brings to Canadians for years to come.

Supervised self-regulation is an effective part of the existing securities regulatory framework. IIROC is committed to build on what has been working well and to continue to work collaboratively with all stakeholders to implement practical and cost-effective changes to support investor protection, innovation and market integrity.

As a pan-Canadian self-regulator, we owe a duty to each provincial and territorial government and to their respective securities authorities to evolve the system for the benefit of all Canadians.

IIROC supports the importance of a range of different business models by size, geography and specialization to fulfil the needs of all investors. Careful analysis is required with any proposed changes to avoid unintended consequences generally and particularly for firms which are smaller, regional or have specialized business models that provide access to advice and choice to investors of all types and means across the country.

Our response to this consultation builds upon our June 9, 2020 Publication: *Improving Self-Regulation for Canadians, Consolidating the Investment Industry Regulatory Organization of Canada and the Mutual Fund Dealers Association of Canada* (**IIROC's Proposal**) as well as:

- IIROC's joint report with Accenture: *Enabling the Evolution of Advice in Canada* (**Evolution of Advice**)
- Deloitte's *Assessment of Benefits and Costs of Self-Regulatory Organization Consolidation* (**Deloitte Assessment**), and
- Investor research, including our *Access to Advice* Survey (**Access to Advice**) and our 2020 Investor Awareness Tracking Survey (**Tracking Survey**) which was a follow up to the 2017 Benchmark Research to gauge awareness and knowledge of Canadians about regulation and the impact on investor confidence.

Our recommendations on how to best move forward are also found below, in the section *Achieving Target Outcomes*.

We would like to thank the CSA, the people and organizations we regulate, and the many other industry stakeholders and investor organizations who engaged with us as we developed our proposal and our response to this consultation. It is only by working together that we can enhance the delivery of our mandate of investor protection and market integrity, and ultimately, better outcomes for Canadians.

General Consultation Questions

Question A

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

Response

We agree with the stakeholder comments about the strengths and benefits of self-regulation.

Self-regulatory organizations (**SROs**) across sectors are widely recognized for their specialized and operational industry expertise[1] and are funded by member fees.

The enhanced knowledge and expertise of self-regulators results in better and more nimble rulemaking that provides effective protection for Canadian investors and integrity to our markets.[2] IIROC's knowledge and understanding of its dealer members' businesses from opening a client account through to trading and settlement coupled with its oversight of Canadian debt and equity markets, has led to a more holistic and deeper understanding of the drivers of the investment business, its issues and risks.

As an SRO, IIROC delivers "fit for purpose" regulation through our risk-based and proportionate approach. This approach gives investment firms of different sizes and business models operating in various regions and both urban and rural communities, flexibility in how they meet the underlying principles of our rules.

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1 "One (but not the only) justification for the delegation of regulatory authority to self-regulatory organizations (SROs) is that financial market participants that make up SROs are in a better position than a government regulator to understand market developments and to identify and resolve potential problems." Pan, Eric J., *Structural Reform of Financial Regulation in Canada: A Research Study Prepared for the Expert Panel on Securities Regulation* (2009), page 7.

2 IIROC is an affiliate member of The International Organization of Securities Commissions (IOSCO) which is the international body that brings together the world's securities regulators and is recognized as the global standard setter for the securities sector. IOSCO develops, implements and promotes adherence to internationally recognized standards for securities regulation. IIROC is also an associate member of IOSCO's Committee on Regulation of Secondary Markets and Committee on Regulation of Market Intermediaries.

IOSCO's *Methodology For Assessing Implementation of the IOSCO Objectives and Principles of Securities Regulation* (2017) on page 53 (Principle 9) recognizes the value of self-regulatory organizations that are subject to oversight by a government authority. "Self-Regulatory Organizations (SROs) can be a valuable complement to the regulator in achieving the objectives of securities regulation. There can be substantial benefits from self-regulation: SROs may require the observance of ethical and business conduct standards which go beyond government regulations; SROs may have broader ability to compel the production of information than government regulators; SROs may offer considerable depth and expertise regarding market operations and practices, and may be able to respond more quickly and flexibly than the government authority to changing market conditions."

Securities regulation in a market the size of Canada's does not require more than one SRO. The current system includes the MFDA which focuses on regulating one product, mutual funds, while IIROC currently regulates a wide range of retail and institutional business models and products, including mutual funds. Approximately two-thirds of mutual funds sold in Canada are currently sold through the IIROC channel.[3] This regulatory fragmentation and duplication can act to limit the access that some investors have to products appropriate for their circumstances and life stages.

IIROC is recognized by each of Canada's 13 securities authorities and delegated authority to protect Canadian investors and the integrity of Canada's capital markets. Our pan-Canadian mandate is an especially important component in delivering consistent investor protection to investors from coast to coast. It supports rule consistency across the country, a more consistent framework for new entrants and innovators, and generates confidence for stakeholders and market participants.

Provinces and territories benefit from the economies of scale of a pan-Canadian SRO. The operational efficiencies generated through an SRO consolidation would further enhance the value to the provinces and territories, incumbents and new entrants and the Canadians we all serve.

In 2008, IIROC was created when part of the Investment Dealers Association of Canada (**IDA**) and Market Regulation Services Inc. (**RS**) came together to form a pan-Canadian self-regulatory organization overseeing all investment dealers and their trading activity in Canada's debt and equity markets.

The experience and insight gained in bringing together those two distinct and more complex organizations informs the IIROC Proposal and the Achieving Target Outcomes section below. The proposed consolidation of IIROC and the MFDA would be much simpler from a legal, operational and cultural perspective and could be concluded quickly with minimal disruption and cost.

This supervised self-regulatory model has enabled stronger policy development, oversight and accommodation of new ideas and innovations for the benefit of investors and in the public interest. In particular, the value and effectiveness of market surveillance have been enhanced by being connected to other IIROC functions and oversight. The existing SRO model at IIROC drives important coordination across departments. The access and ability to aggregate both dealer and market data enables IIROC to simultaneously consider market and client-facing activities by firms in the context of their business operations, resulting in stronger investor protection, market integrity and transparency. Our holistic view into the operations of the firms we regulate makes IIROC a better regulator and better able to respond to new issues and innovation in the industry.

[3] IFIC Monthly Investment Fund Statistics, July 2020; MFDA Membership Statistics

Another benefit of the existing SRO model is its similarity with the regulatory system in the US whose capital markets are closely intertwined with ours. This compatibility supports:

- information sharing and best practices[4]
- cross-border coordination and collaboration where required, on both existing and emerging industry issues, investigations, etc.
- access efficiencies for Canadian and US capital markets[5]

Given the significant and well-established value that self-regulation provides to the North American securities regulatory framework, our collective focus should be on how to simplify and enhance the model to benefit Canadians and the Canadian economy.

Question B

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

Response

We believe the following are important issues for consideration:

Scope

We are limiting our responses to the scope of this consultation - the SRO framework as it relates specifically to IIROC and the MFDA, and as the framework exists today. It is still important, however, to consider this consultation, the issues and the targeted outcomes in the context of the Canadian regulatory ecosystem,[6] as a whole, to avoid unintended consequences to investors, the markets or the system.

Two important issues out of scope but providing relevant context are the uniqueness of Québec and the operation of the Montreal Exchange as an SRO for listed futures and options.

Québec

Québec's regulatory framework differs in several ways from other Canadian jurisdictions. While IIROC is recognized in Québec, the MFDA has never been recognized as a self-regulatory body

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4 IIROC and the Financial Industry Regulatory Authority (**FINRA**) executed a Memorandum of Understanding in 2009, a formal cooperation agreement to enhance the effectiveness of both organizations through the exchange of information and other cross-border assistance.

5 There are 182 equities that are dual-listed on both U.S. and Canadian stock exchanges, representing a market capitalization of $2 trillion, and 64% of the total market capitalization as of September 30, 2020. This information was provided by the TMX, based on TMX data/issuers.

6 "The regulation of financial services in Canada is fragmented, uneven, overlapping and complex. Both the federal and provincial governments share jurisdiction for regulating financial services. As such, various regulators and government agencies are responsible for overseeing the regulation of different aspects of the industry, including investor protection and securities law, consumer protection, anti-money laundering, privacy and data security, and payment processing." Regulation of Fintech in Canada, Dentons (2017)

by the Autorité des marchés financiers (**AMF**). Instead, the AMF and the Chambre de la sécurité financière (**CSF**) share the responsibilities of regulating, monitoring and inspecting the firms and registrants who carry out activities exclusively in mutual funds in Québec.

The consultation does not include the CSF and the Québec framework. In the event of a consolidation of IIROC and the MFDA, the mutual fund firms which are authorized by the AMF with activities outside Québec would remain under the shared jurisdiction of the CSF and the AMF for their activities in Québec. Their activities outside Québec would be under the jurisdiction of the new single SRO.

Decisions about Québec are the responsibility of the Québec authorities and outside the scope of this consultation. IIROC looks forward to continuing its very productive relationship with the Québec securities regulators.

Derivatives SRO

Globally, many investment dealers manage their fixed income sales and trading businesses alongside or in close proximity with futures. In addition, in Canada and around the world, equity sales and trading businesses are often managed with options, often by employees registered to do both. From a supervisory and compliance perspective, these business lines and asset classes are also often grouped together as the compliance and risk issues can arise across asset classes. In Canada, however, there is a third SRO responsible for listed derivatives, the Regulatory Division of the Montreal Exchange. This separation of the derivatives SRO in Canada is outside of the scope of our response.

Support for a variety of business models

In IIROC's Proposal, we support the importance of a range of different business models by size, geography and specialization serving clients of all sizes and means across the country in rural and urban communities. In support of investor protection, we will collectively need to avert taking steps that could leave any group of investors unserved, or unprofitable to serve. Careful analysis will be required to avoid unintended consequences which might impact smaller, regional and specialized business models. This should include ensuring a framework which supports ongoing innovation and new entrants and the provision of a wider selection of products and services for investors. Based on our experience, we strongly support a focus on the importance of small and independent dealers who provide access and choice to investors across the country regardless of where they live or the amount of their investments.

In addition to investment dealers (both bank-owned and independents), there is also an industry of service providers—"FinTech" and contractors—that are supported by and dependent on the industry for growth and prosperity.

Risk-based approach to proportionate regulation

A key aspect of IIROC's support for all business models and a critical component of IIROC's Proposal is to continue its risk-based approach to regulation. In moving forward from the current framework of rigid registration categories, IIROC already applies and supports the proportionate and appropriate application of rules based on the risk of the activity to investors

and market integrity. This philosophy is at the heart of the IIROC Proposal and our response to this consultation.

Question C

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

Response

As all of the targeted outcomes have a direct or indirect impact on investors, and are all interconnected, all should be pursued and achieved to result in the best overall outcomes for Canadians.

Question D

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

Response

As a data-driven, evidence-based regulator we continuously conduct research and analysis to support our regulatory approach to ensure that we are taking into account how the industry is evolving in order to better serve Canadians. Throughout our response, we cite a number of studies/assessments:

References cited in our response:

- *Access to Advice*, The Strategic Counsel and IIROC (2020)
- *Advisor Succession Planning: Managing the retirement of Baby Boomer advisors*, Accenture (2015)
- *A Major Transition*, Investment Executive (2018)
- *Assessment of Benefits and Costs of Self-Regulatory Organization Consolidation*, Deloitte (2020)
- *A Survey of Canadian Investors' Views on Alternative Disciplinary Proposals*, The Strategic Counsel and IIROC, (2018)
- *Awareness and Attitudes Related to Provisions to Protect Vulnerable Investors and Investment Firms/Advisors*, The Strategic Counsel and IIROC (2019)
- *Enabling the Evolution of Advice in Canada*, Accenture and IIROC (2019)
- *Financial Professionals Title Protection Rule and Guidance*, Financial Services Regulatory Authority of Ontario (2020)
- *Fintech at the Crossroads: Regulating the Revolution*, McMillan (2016)

- *Global Wealth Research Report, How do you build value when clients want more than wealth?*, EY (2019)
- *IFIC Monthly Fund Investment Statistics*, Investment Funds Institute of Canada (2020)
- *IIROC Compliance Report: Helping Firms With Compliance*, IIROC, (2019)
- *IIROC, FINRA Announce Cooperation Agreement*, IIROC and FINRA (2009)
- *IIROC Policy Priorities – Update Report*, IIROC (2020)
- *IIROC Priorities for 2021*, IIROC (2020)
- *IIROC submission to the Ontario Capital Markets Modernization Taskforce*, IIROC (2020)
- *IIROC to form expert investor issues panel for valuable input on consumer issues*, IIROC (2020)
- *Improving Self-Regulation for Canadians, Consolidating the Investment Industry Regulatory Organization of Canada and the Mutual Fund Dealers Association of Canada*, IIROC (2020)
- *Investor Awareness Tracking Survey*, The Strategic Counsel and IIROC (2020)
- *Investor Preferences Undergo Lasting Transformation from Covid-19 Pandemic*, Broadridge (2020)
- *Making Regulation a Competitive Advantage*, Deloitte (2019)
- *MFDA Membership Statistics*, Mutual Fund Dealers Association of Canada (2020)
- *Ontario Capital Markets Modernization Taskforce Report*, (2020)
- OSC Bulletin, various volumes and issues, Ontario Securities Commission (2007, 2018 and 2020)
- *Methodology For Assessing Implementation of the IOSCO Objectives and Principles of Securities Regulation*, International Organization of Securities Commissions (2017)
- *Qualitative Research with Complainants,* Navigator Ltd. and IIROC (2020)
- *Reducing Regulatory Burden in Ontario's Capital Markets*, Ontario Securities Commission (2019)
- *Regulation of Fintech in Canada*, Dentons (2017)
- *Ripe for Reform: Modernizing the Regulation of Financial Advice*, C.D. Howe Institute (2019)
- *Structural Reform of Financial Regulation in Canada: A Research Study Prepared for the Expert Panel on Securities Regulation*, Eric J. Pan (2009)
- *Wealth Management - After the Storm*, Morgan Stanley & Oliver Wyman (2020)
- *What kind of modernization does the Securities Act really need?*, The Globe and Mail (2020)

Other sources for consideration are included below:

- *A 360 Review of Issues and Concerns Related to the Canadian Investment Marketplace: A Consultation Among MFDA and Dual-Platform Dealers*, Navigator Ltd. (2020)
- *BC Capital Market Report - 2019*, British Columbia Securities Commission (2019)
- *Canadian Mutual Fund & Exchange-Traded Fund Investor Survey*, Investment Funds Institute of Canada and Pollara Strategic Insights (2020)
- *Global Wealth 2020: The Future of Wealth Management—A CEO Agenda*, Boston Consulting Group (2020)
- *Global Regulatory Outlook 2020: The Regulatory Landscape Evolves*, Duff & Phelps (2020)
- *IIROC Annual Report 2019/2020*, IIROC (2020)
- *IIROC Enforcement Statistics*, IIROC (2020)
- *Industry Self-Regulation: Role and Use In Supporting Customer Interests*, Organisation for Economic Co-operation and Development, OECD (2015)
- *On the cusp of change: North American wealth management in 2030*, McKinsey & Company (2020)
- *Qualitative Research Among MFDA Advisors*, Navigator Ltd. (2020)
- *Self-Regulation In The Securities Markets*, CFA Institute (2013)
- *The Alberta Capital Market*, Alberta Securities Commission (2020)
- *Top Trends in Wealth Management: 2020*, Capgemini (2019)
- *Two-thirds of Canadian Investors are Interested in Starting or Building their Portfolio of Responsible Investment*, Ipsos (2020)
- *Wealth Management and Advice in the Time of Coronavirus*, Deloitte (2020)

Issues Identified by the CSA

Achieving Target Outcomes

The growth and stability of the investment industry is important to Canada. The industry is responsible for assisting Canadians in navigating their financial future and is an employer of a significant number of Canadians. The continued evolution and success of the investment industry contributes to the stability of our broader financial sector and the Canadian economy.

Each of the seven issues identified by the CSA includes a question regarding the best way to achieve the targeted outcome. Based on our continuing engagement with a wide range of stakeholders and as set out in the IIROC Proposal, the way forward towards achieving the seven sets of targeted outcomes must:

- Be a positive experience for investors, regardless of where they live, how many assets they have or their level of investing sophistication as measured by additional investor protection and an improved investor experience which will result in higher investor confidence in the system
- Have a positive impact on dealers' and representatives' ability to serve Canadians, regardless of size or business model
- Foster a competitive industry to ensure there are investment opportunities and value propositions for existing and evolving Canadian investor needs
- Reduce duplicative regulatory burden and complexity, to increase transparency and efficiency for the ultimate benefit of investors
- Demonstrate operational improvements quickly and in prioritized stages, to create an updated and more nimble SRO model that is well-placed and ready for the future.

Self-regulation delivers unique value to stakeholders, and although the current framework may not be perfect today, there is much that is working well in protecting investors and market integrity in support of Canada's capital markets. Tearing everything down and starting over, as some have suggested, would be inefficient, costly, and unduly disruptive for investors as well as industry and market participants, especially now, during challenging economic times.

Consolidating IIROC and the MFDA at the earliest opportunity will be beneficial for all market participants and for governments. With minimal short-term effort by governments and/or the CSA, the efficiency and effectiveness of securities regulation can be improved in this country at a time when government resources are stretched and focused on economic renewal. IIROC's Proposal recognizes the valuable organizational and individual expertise of IIROC and the MFDA, and builds on what is already working to achieve practical results in an efficient time

frame resulting in a platform that is nimble and responsive for the future.[7]

As set out in the IIROC Proposal, the most effective way to achieve the CSA's targeted outcomes is to bring together IIROC and the MFDA into a consolidated SRO as an important first step. This would:

- Reduce investor confusion and support investors' ability to make more informed decisions[8]
- Enable easier access to a wider range of services and products for many Canadians, including lower cost options such as exchange-traded funds (**ETFs**)[9]
- Remove duplicative regulation and complexity that could allow the industry to reinvest up to $490 million[10] into client service and innovation over the next 10 years, without compromising investor protection
- Support greater innovation in Canada as it would make it easier for "FinTech" players to develop new technology for the largest possible market of dealers, as they could focus on one SRO regulatory platform. This in turn would make innovation more readily accessible for independent and smaller dealers[11]
- Provide firms and advisors more flexibility to transition and grow and plan for succession in the midst of a demographic shift in the advisor workforce with a larger number of baby boomer advisors approaching retirement[12]
- Contribute to the recovery and growth of the Canadian economy.

Taking a phased approach has received support from Ontario's Taskforce for Capital Markets Modernization.[13]

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7 "A merging of SROs would create a more finely tailored, fit-for-purpose oversight regime. Such an initiative would remove operational complexity and costs for dealers; streamline and bring greater efficiency to the regulatory oversight process; and give advisers the flexibility to grow and expand to respond to their clients' financial service needs as they move through their life-stages. This would help dealers and advisers deliver a more affordable, responsive and coordinated service to their investor clients and reduce the overall regulatory burden on the industry." *Ripe for Reform: Modernizing the Regulation of Financial Advice*, C.D. Howe Institute (2019), page 1

8 For example, the 2020 Tracking Survey found that while knowledge of the regulatory system in Canada is limited, investors acknowledge the importance of understanding regulators, with almost three quarters of Canadians polled indicating some degree of interest in learning more about the regulation of the investment industry.

9 "Growing demand for various products, particularly ETFs, and interest in fee-based and portfolio-management business models may be motivating MFDA-licensed advisors to take another look at IIROC, says Dan Hallett, vice president and principal with HighView Financial Group in Oakville, Ont." *A Major Transition*, Investment Executive, (2018)

10 Deloitte Assessment

11 "The new entrants may respond that regulatory compliance is costly and that too much regulation imposes unreasonable barriers to entry that protect vested interests and oligopolies and stifle competition and innovation." *Fintech at the Crossroads: Regulating the Revolution*, McMillan, (2016), p 2.

12 *Advisor Succession Planning: Managing the retirement of Baby Boomer advisors*, Accenture, 2015

13 Ontario Capital Markets Modernization Taskforce Report (2020)

The employees of IIROC and the MFDA have the knowledge and expertise to enhance supervised self-regulation in Canada, and IIROC is well-positioned to contribute its experience from bringing together the IDA and RS. As well, the similarity of the corporate legal structures of IIROC and the MFDA, along with the product overlap should result in a consolidation that is much simpler to execute.

Taking a phased approach beginning with a fairly seamless consolidation would contribute to the stability of the overall regulatory framework and investor confidence while providing continuity in regulation for market participants. We have seen firsthand the challenges and disruption presented by the pandemic – a phased approach will help minimize further disruption and provide needed stability.

As part of Phase 1, we would seek to:

- Initially:
    - operate separate mutual fund and investment dealer regulatory divisions
    - ensure that the same rules that apply to firms today would continue to apply, with the exception of:
        - repealing the IIROC rule which requires individuals qualified to conduct mutual funds business only to complete additional proficiency and training requirements within 270 days and 18 months, respectively, from the date they are initially approved by IIROC (**IIROC Upgrade Rule**)[14]
        - eliminating the current prohibitions on IIROC and MFDA firms entering into introducing / carrying arrangements (a type of back-office sharing arrangement) with each other[15]
    - bring together enforcement resources to ensure a consistent approach
- Over time, move to a single set of rules and consistent application that is risk-based, proportionate, and accommodates a range of business models.

Evolving Canada's self-regulatory framework in phases allows us collectively to improve the Canadian regulatory framework through the immediate and over time removal of unnecessary and overlapping regulation and deliver value to stakeholders. Taking measured steps, we can continue to evolve as we integrate – leveraging the strengths of both organizations to create a modernized SRO – all while reducing investor confusion and enhancing investor protection. From that streamlined and stronger platform, the new SRO would continue to support the CSA in further improvements to the framework during the recovery from the pandemic.

As part of a Phase 2, and/or subsequent phases, we support and look forward to working with the CSA and other stakeholders to review other registration categories for incorporation into the mandate of the new SRO, if the CSA deems it is appropriate.

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[14] Requires CSA approval.

[15] Ibid.

To the extent that all firms and individuals who are offering similar products and services to Canadians are under the purview of the same regulator, regulatory arbitrage will be reduced, and investors will have consistent and better levels of protection.

Issue 1: Duplicative Operating Costs for Dual Platform Dealers

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

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

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

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

Response

We agree with stakeholder comments regarding duplicative operating costs. The IIROC Upgrade Rule essentially prohibits an investment dealer from employing mutual fund-only licensed individuals on the IIROC platform. As a result, dual-platform dealers servicing similar segments of the investing public have to create separate regulated entities and incur duplicative operating costs that are ultimately borne by investors. For example, the Deloitte Assessment estimated the net present value of operating cost savings that could be achieved by dual-platform firms over a 10-year time period to be between $380 million and $490 million. Operating costs/potential savings include systems and technology, staffing, corporate, and other costs.

The Deloitte Assessment also highlighted the potential for reduced regulatory fragmentation and burden, access to more holistic and flexible investment advice for investors, and enhanced opportunities for new firm entry and innovation under a single SRO framework. Given how SRO membership and investor protection fund fees are assessed, further analysis would be necessary to determine the impact of an SRO consolidation on fees. The target outcome guiding this analysis would be that like activity, regardless of the SRO division in which they are housed, will attract like fees. In other words, just as there should be no rule arbitrage between the divisions, there should be no fee arbitrage either.

Fragmentation and duplication extend beyond the SRO framework. While mutual fund dealers operating in most provinces in Canada are regulated by the MFDA, in Québec mutual fund dealers are regulated by the AMF with registrants required to be members of the CSF for continuing education, ethics and enforcement matters.

As discussed in our response to Issue 4, evolving investor needs are translating into demand for lower-cost investments as well as more sophisticated solutions, putting further pressure on firms to optimize operational costs.

As discussed in the Deloitte Assessment, the current SRO framework has been a barrier to investment in innovation and technology. For dual-platform firms in particular, the current SRO framework creates regulatory obstacles that:

- limit the cost savings from firms looking to centralize back-office functions which could be invested in technology and other innovations to deliver better solutions and service offerings to investors
- add unnecessary obstacles and confuse investors when transitioning from the MFDA platform to the IIROC platform within the same firm brand.

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

Response

We support the CSA's targeted outcome. The existing Canadian regulatory framework uses both provincial/territorial government agency and supervised SRO regulation to protect investors, strengthen market integrity and maintain efficient and competitive capital markets. Consolidation of two SROs would be an important first step in achieving the targeted outcome, reducing unnecessary duplication and process, and improving the investor experience.

As part of Phase 1, we would recommend eliminating the IIROC Upgrade Rule.

With minimal cost and disruption, a new, consolidated SRO would create a streamlined platform and enable innovation and investment during a profound period of economic uncertainty. The CSA could build on this evolution of the SRO model over time and as appropriate.

Issue 2: Product-Based Regulation

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

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

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

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

Response

We agree with many of the stakeholder comments that a more streamlined regulatory framework will create efficiencies in regulatory oversight and enable more proportionate and consistent application of regulation.

Regulatory arbitrage opportunities will continue to exist wherever more than one regulator has oversight over the same or similar products and services. To eliminate this issue, the ultimate solution will need to involve IIROC, the MFDA, the provincial and territorial securities regulatory authorities and the two existing investor protection funds.

Given the complexities of the current structure, consolidation of two SROs would be an important first step in achieving the targeted outcome, significantly reducing opportunities for regulatory arbitrage. We agree with the views expressed by certain stakeholders that any regulatory structural change should occur on a staged basis.

We also agree with the observations made by certain stakeholders that a lack of common oversight standards have resulted in multiple compliance teams and different interpretations of similar rules. Even when the same rules are adopted by different regulators, their application, interpretation and enforcement may differ. This situation can create inconsistency and unfairness in outcome, potential regulatory arbitrage and can reduce investor confidence in the system.

Some stakeholders noted that IIROC's rules are more principles-based while the MFDA tends to be more prescriptive. Determining whether to utilize a principles-based approach or a prescriptive approach is an important policy consideration. However, choosing one approach over the other does not automatically result in regulatory arbitrage. Instead the source of regulatory arbitrage is the different application of rules.

<u>Offering products and services across multiple registration categories</u>

There is a view that multiple firm registration categories recognize more unique business models than would otherwise be recognized within one category, enabling greater access to products and services (including advice) by clients from small communities or with smaller amounts to invest.

However, it is unclear whether this greater access objective is being achieved given that under the existing multiple categories approach:

- investment dealers are effectively prohibited from making mutual fund-only account service offerings available to clients on a cost-efficient basis[16]
- clients are unaware of the regulatory arbitrage-related differences between each firm category[17]
- clients are confused[18] as to which:
    - products and services they can access within each firm category[19]
    - firm category offers the products and services that are most appropriate for their needs.

To mitigate regulatory arbitrage and facilitate greater client access to products and services, it is important to give the regulator the flexibility to accommodate innovative business models while maintaining core rule consistency for all business models across all regulators. To that end, IIROC has demonstrated that a flexible / proportionate regulatory approach is feasible (e.g. order-execution-only (**OEO**), robo-advisor, traditional advisory and managed account service offerings etc.) and, as part of a consolidation with the MFDA, we would pursue this approach further.

Individual registrant access to different firm registration categories

We agree that individuals should have access to different registration categories. This should include mutual fund-only licensed individuals being allowed to work for an investment dealer and indefinitely provide mutual fund-only account services to their clients (as is the case today at a mutual fund dealer).[20, 21]

Overall role of products and services and individual proficiency in determining firm registration categories

Firm registration categories have traditionally been introduced to accommodate unique business models not specifically addressed under the existing categories. This approach, while

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16 See related cost discussion in response to Question 1.1 and related advisor proficiency and education requirements discussion in response to Question 3.1.

17 A regulatory arbitrage example is the current difference in proficiency requirements for individuals selling only mutual funds as discussed later on in this response in the section entitled *"Individual registrant access to different firm registration categories."*

18 See related investor confusion discussion in response to Question 5.1.

19 A list of products, services and other activities currently provided/conducted through each category of firm registration is included in IIROC's Proposal on p 36.

20 Similarly, an individual who meets the proficiency requirements to be registered as an "Exempt market dealer – dealing representative" [section 3.9 of National Instrument 31-103, *Registration Requirements, Exemptions and Ongoing Registrant Obligations*], should be allowed to carry out the same activities within an investment dealer as they are permitted to perform within an exempt market dealer, without having to meet additional proficiency requirements.

21 See related advisor proficiency and education requirements discussion in response to Question 3.1.

initially effective, has resulted in uneven regulatory standards and individual proficiency requirements, including some instances of unevenness when the same product or service is being made available through firms in different registration categories.

The increasing use of technology within the financial services industry has resulted in significant growth of new products and services that firms wish to offer to clients. This includes products based on new asset classes (i.e. crypto assets) and digital / automated services that rely less on a registered individual's interaction with the client (i.e. robo and hybrid advice).[22]

We cannot continue to address new business models, products and services through the introduction of additional firm registration categories – there are simply too many new developments. As well, further fragmentation of the regulatory requirements would only worsen the existing regulatory arbitrage concern and contribute to investor confusion. It is also not optimal to continue to address new developments through "ad hoc" exemptions, unless core rule compliance and consistency and appropriateness of the exemptive relief granted is verified in each case.

As previously discussed, one viable option would be to give the regulator the flexibility to accommodate innovative business models while maintaining core rule consistency for all business models across all regulators. Another would be to reconsider the need for so many different categories of firm registration, particularly where it is determined that a flexible / proportionate regulation approach is effective in accommodating existing and new business models and satisfying consumer product and service demands. Further to the IIROC Proposal, the consolidated SRO could be enabled to move to a single registration category with appropriate and proportionate rule application depending upon the business model and risk of the dealer.

Contribution of current regulatory framework to regulatory arbitrage

As noted above, by having different rules, administered by different regulators, for similar products, and differing proficiency standards for representatives on different platforms, firms may be tempted to opt for the least costly, least burdensome platform. This may result in a situation where certain investors with more complex needs have an account only at a firm with limited product and service offerings without being aware of other options offered to them.

Support for this gap in awareness of investors is found in the 2020 Tracking Survey. One of the key findings of the study was that seven in ten investors indicate a general awareness that the investment industry is regulated (70%), however 41% agree that they don't really understand how the industry is regulated. In particular, the study found that, investors are largely unaware of the limitation of advisors to recommend or sell products other than those in which they are regulated.

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[22] According to EY's 2019 Global Wealth Research Report, *How do you build value when clients want more than wealth?* on page 9, "The percentage of clients expecting to use FinTech solutions will increase from 38% today to 45% in the next three years. Expected FinTech use over the next three years is expected to increase with each client wealth segment, with 35% growth expected among mass affluent clients (28% today to 38% expecting to use) and 41% growth among HNW clients (29% today to 41% expecting to use)."

The issue with investors not understanding limitations in product offerings, imposed by the regulatory structure, is compounded by a general lack of understanding of the breadth of products and services available. Another study, Access to Advice, found that 65% of "aspiring investors" do not know the financial products and services that are available to them. The same study found that 90% of current investors say it is important that the level of financial advice and service they receive is flexible to meet changes in their needs and circumstances.

These findings suggest that the current fragmented regulatory structure may be impairing the ability of investors to access and receive advice for the full range of products and services available in the market,[23] especially as their needs change and become more complex.

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

Response

We agree with the targeted outcome of a framework that minimizes opportunities for regulatory arbitrage, provided that investor access/choice and investor protection is not compromised.

Consolidation of IIROC and the MFDA would:

- be an important first step in achieving the targeted outcome, minimizing opportunities for regulatory arbitrage
- facilitate a consistent approach to policy, compliance and enforcement.

Under the IIROC Proposal, the IIROC and MFDA rules would be harmonized over time. Moving to a more flexible and proportionate regulatory approach while maintaining consistent core requirements that apply to all products and services will be important elements of this harmonization work.

As part of a Phase 2, and/or subsequent phases, we look forward to working with the CSA and other stakeholders to review other registration categories, for incorporation into the mandate of the new SRO, if the CSA feels it is appropriate.

In today's complex capital markets there are numerous products, such as mutual funds, ETFs and segregated funds, that are similar to, or can function as substitutes for, other products; therefore, it is crucial to have consistent regulatory oversight over all such products. This will still allow smaller firms to provide customized services and limited product offerings to certain market segments in a cost-effective manner. Having common regulatory oversight of rules applicable to all products[24] will minimize opportunities for regulatory arbitrage. As IIROC's

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[23] To respond to investor needs and the limitations of a one-product platform the MFDA implemented rule amendments to facilitate the offering of ETFs on the MFDA platform and last year proposed amendments to MFDA Rule 2.3.1(b) to allow for the provision of limited discretionary trading services to investors.

[24] IIROC currently has oversight over all product-related activities of its Dealer Members, with the exception of trading on Canadian derivative and foreign marketplaces.

mandate includes all product types and multiple different business models, we are proof that having a regulator overseeing all dealer activity, using a flexible and proportionate approach, is not only feasible but is also effective and efficient.

Issue 3: Regulatory Inefficiencies

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

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

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

a) Describe which comparable rules, policies or requirements are interpreted differently between IIROC, the MFDA and/or CSA; and the resulting impact on business operations.

b) Describe regulatory barriers to the distribution of similar products (e.g. ETFs) available in multiple registration categories.

c) Describe any regulatory risks that make it difficult for any one regulator to identify or effectively resolve issues that span multiple registration categories.

Response

Regulatory inefficiencies by their nature can lead to unnecessary regulatory burden and regulatory arbitrage. Two inefficiencies cited by stakeholders are:

- inefficient investor access to products and services for some firm registration categories and
- excessive costs and issue resolution inconsistencies associated with multiple regulators.

Inefficient investor access to products and services

We agree that inefficient and inconsistent investor access to products and services is a significant concern.[25]

In the case of investor access to ETFs, we also agree with stakeholder comments that current regulations preventing mutual fund dealers from entering into back-office sharing arrangements with investment dealers make it more challenging for a mutual fund dealer to find cost-efficient ways to provide clients with access to ETFs and similar products. Specifically,

[25] A similar broader concern was included in the Ontario Securities Commission's 2019 report, *Reducing Regulatory Burden in Ontario's Capital Markets* on page 5 where it states that "Outdated rules, unnecessary duplication and complexity benefit no one. In fact, they add costs that are ultimately borne by investors, and they reduce participation in our markets."

because current SRO rules prohibit introduction arrangements between IIROC and MFDA firms:[26]

- only an omnibus account arrangement can be entered into between IIROC and MFDA firms to give investors access to ETFs on the MFDA platform
- the additional systems enhancements necessary to make an omnibus account arrangement work for ETFs can be relatively expensive for mutual fund dealers who do not anticipate facilitating high volumes of ETF transactions for their clients.

The prohibition of IIROC/MFDA back-office sharing arrangements was put in place to ensure that non-IIROC dealers would not be able to access Canadian Investor Protection Fund (**CIPF**) protection for their clients without meeting IIROC requirements, including minimum solvency and insurance coverage requirements.

In order to give mutual fund dealers the option of using investment dealer back-office systems to meet books and records and client reporting obligations relating to ETF transactions via IIROC/MFDA introduction arrangements, a rule change agreement is needed with the MFDA (along with CIPF and the MFDA IPC). This is a longstanding example of regulatory inefficiency requiring agreement by various parties to address. IIROC and the CSA have recently permitted back-office sharing arrangements with registered portfolio managers who are not IIROC firms, so allowing firms in other registration categories to enter into such arrangements with IIROC-regulated firms is not a novel concept.

There are some additional factors relating to efficient access to products and services. All registrants that facilitate this access should:

- in the case of registered individuals, satisfy equivalent minimum and ongoing proficiency requirements and continuing education requirements, and
- satisfy equivalent product due diligence and know-your-product requirements.

This is necessary to ensure that individuals with equivalent qualifications are involved in providing access to the specific product or service and to avoid regulatory arbitrage. So, as part of enabling more efficient investor access to ETFs through an MFDA firm, inconsistencies between the IIROC and MFDA proficiency and continuing education requirements[27] should be harmonized as appropriate. This work should include deciding whether to mandate the completion of an ethics course, which we support, for all client-facing registered individuals transacting in ETFs (or any investment) with a client, as is required for IIROC Approved Persons.

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[26] IIROC DMR subsections 35.1(b) and 35.1(c); MFDA Rule 1.1.6.

[27] IIROC DMR 2900, Part A, Item #3 and IIROC Continuing Education Rule 2650; MFDA Rule 1.2.3 and MFDA Policy No. 8.

Additional costs and other inefficiencies associated with the current regulatory framework

We agree that additional costs and other inefficiencies associated with operating multiple SROs, and multiple regulators within the current regulatory framework, are a concern.[28] Specific to operating multiple SROs, there are:

- higher CSA oversight costs
- duplicative costs relating to non-regulatory functions (such as accounting, human resources, offices services and information technology).

Specific to the current regulatory framework as a whole, there are also additional costs associated with:

- developing, maintaining and interpreting multiple rule sets that address all of the activities performed by each category of registered individual and each category of registered firm
- coordinating rule development and interpretation amongst multiple regulators, to minimize the likelihood of situations where the requirements that apply to the same activity on different firm platforms differ.[29]

Creating a new consolidated SRO will help reduce these costs and other regulatory inefficiencies. Additional efficiencies could be realized through reductions in the number of registration categories and the number of rule sets that apply to these categories.

Advisor proficiency and education requirements

Another regulatory inefficiency not mentioned by stakeholders is the maintenance of a rule that is not so much focused on investor protection or capital markets efficiency, but rather on the maintenance of the existing regulatory framework, specifically the IIROC Upgrade Rule.

The IIROC Upgrade Rule requires mutual funds-only licensed individuals to upgrade their qualifications to those required for licensed individuals that transact in any type of security within 270 days after becoming an employee of an IIROC Dealer Member. The rule (and its predecessor OSC rule):

- was enacted to ensure that only the MFDA acts "…as the self-regulatory organization (the SRO) for firms and individuals whose dealer activities are limited to sales of mutual funds"[30]
- was retained in the past at least in part because of the concern that, if the rule was repealed, "…the ongoing viability of the MFDA could be undermined".[31]

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[28] A similar concern is expressed within C.D. Howe Institute Commentary No. 556, *Ripe for Reform: Modernizing the Regulation of Financial Advice*, on page 7 that "The existence of a multi-layered regulatory framework, with multiple structures, means that each separate license or registration, whether through a government or professional agency, comes with its own distinct oversight, audit, and record-keeping regime."

[29] These situations, referred to as "regulatory arbitrage" are discussed in greater detail in our response to Question 2.1.

[30] OSC Bulletin Volume 30, Issue 10 (March 9, 2007), page 2100, *Notice of Amendment to OSC Rule 31-502, Proficiency Requirements for Registrants*.

[31] Ibid.

Continuance of the IIROC Upgrade Rule effectively imposes higher proficiency and education requirements for individuals offering mutual funds-only account services on the IIROC platform than those that must be met by individuals offering mutual funds only account services on the MFDA platform.

The existence of the IIROC Upgrade Rule also impacts Canadians who wish to:

- commence their investing with a small amount of money
- contribute to and build their investment portfolio over time
- efficiently access more sophisticated products and services once more customized investments become suitable
- develop and evolve a long-standing relationship with their individual advisor, as their investment objectives and financial situation change, without having to repaper their relationship numerous times along the way.

Specifically, the IIROC Upgrade Rule effectively requires these clients to change from an MFDA to an IIROC firm once they are ready to access more sophisticated products and services. Without the upgrade rule, these same clients would:

- be able to access both simpler and more sophisticated products and services at the same IIROC firm
- be able to transition from entry level services to more sophisticated services without having to redo account documentation as though they were new client of the firm, resulting in less confusion and disruption.

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

Response

<u>Is the CSA targeted outcome for issue 3 described appropriately?</u>

Yes, provided the updated regulatory framework not only addresses issues associated with investor access to products and services, including advice, but also:

- addresses the existing product and account services regulation approach, which features uneven regulatory requirements for similar products and services depending upon:
    - product classification (i.e. security, derivative or crypto asset)
    - regulatory platform on which the product or service is offered
- better facilitates the introduction of new product and account service offerings.

If yes, how can the targeted outcome be best achieved?

To further reduce regulatory inefficiencies and to more fully utilize the expertise of SROs and SRO staff:

- the CSA requirements should focus more on the maintenance of core regulatory obligations that are owed, or not owed, to clients depending upon the products and services they are offered (i.e. no advice, advice or decision making)
- in addition to the maintenance of equivalent core regulatory obligations, the SRO requirements should focus on any additional requirements that are necessary to ensure:
    - the proper carrying out of these core regulatory obligations
    - consistency in the assessment of risk across all classes of investment products
    - consistency in client reporting relating to specific products and services.

Continuing to maintain detailed prescriptive rules at both the CSA and supervised SRO level is duplicative and constrains the SROs' ability to facilitate new product and service offerings that investors are requesting.

Issue 4: Structural Inflexibility

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

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

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

a) How does the current regulatory framework either limit or facilitate the efficient evolution of business?

b) Describe instances of how the current regulatory framework limits dealer members' ability to utilize technological advancement, and how this has impacted the client experience.

c) Describe factors that limit investors' access to a broad range of products and services.

d) How can the regulatory framework support equal access to advice for all investors, including those in rural or underserved communities?

e) How have changes in client preferences impacted the business models of registrants that are required to comply with the current regulatory structure?

Response

Introduction

In general, we agree with the stakeholder comments and that the current, fragmented regulatory framework includes structural inflexibility that constrains innovation and the industry's ability to effectively and efficiently meet changing investor needs. We believe that

the current framework also includes examples of structural *flexibility* that contribute to investor confusion, inconsistency and unnecessary complexity.

Examples of structural inflexibility include:

- *Account service offerings*

  Currently, there are three main categories of account service offerings made available to clients:

  - OEO
  - advisory
  - managed / discretionary

  Advances in technology, as well as changing investor needs have led to the development of new account service offerings, some of which do not fit cleanly into one of the above categories. As more firms seek to expand their offerings and deliver on investor expectations of one-stop shopping for holistic advice and service, discrete firm registration categories focused on specific service offerings may become increasingly unable to accommodate the industry's evolution.

- *Legacy rules that do not allow technology to play a role*

  In order to more effectively and efficiently accommodate innovation, regulators need to provide greater clarification on what activities must be performed by individuals versus those for which individuals are accountable, but can be automated.

- *Delays in granting exemptions*

  Currently, it can be challenging for SRO staff to efficiently accommodate new business models by granting appropriate exemptive relief where there are corresponding CSA rules. Bi-lateral discussions and the time required to achieve alignment can lead to delays, uncertainty and costs for those seeking the relief.

- *IIROC Upgrade Rule*

  As outlined above in our response to Issue 3, we agree that this rule presents an unnecessary barrier for firms seeking to introduce mutual fund-only services to clients on the IIROC platform.

In terms of structural flexibility, firms can choose between different regulatory platforms with different requirements and levels of oversight, and representatives are able to choose between different registration categories with different proficiency and oversight requirements.

This structural flexibility:

- results in an un-level playing field, and some firms will be tempted by the lowest cost regulatory platform, which may in turn constrain the range of products and services they are able to offer investors
- increases its complexity, and in turn makes it more difficult for investors to understand and navigate[32]

Changing client needs and expectations

Significant changes in client needs, expectations and preferences including the degree of digital engagement[33] are impacting service providers and regulators in Canada. During our Evolution of Advice initiative with Accenture, we asked over 60 senior leaders from over 20 different firms across Canada how their clients' needs and preferences were changing. We also engaged directly with Canadian investors.[34] Key insights from our research include:

- Canadians are looking for holistic, goals-based advice to support their overall financial objectives and life goals
- Over 85% of Canadian investors told us they want "one-stop shopping", essentially the ability access to a range of products and services without having to go to multiple providers
- Investors do not think of their money from the perspective of type of account or product, even though much of the regulatory system leverages an account-based approach
- Investors want the ability to move seamlessly between different types and levels of services, without having to transfer back and forth across business lines and open new accounts
- Investors are generally seeking more transparency and more control over the wealth management process, and that they expect to be able to access advice and service when and how they want – easy digital experiences are increasingly considered table stakes
- 90% said they want the level of financial advice and service to be personalized, and flexible in order to meet changes in their needs and circumstances
- Over a quarter of investors say they do not need their advice to come from a human.

How the industry is responding

Firms are responding by broadening the scope of advice, products and services offered. Many firms have implemented, or are exploring, new technology-centered business models such as

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[32] See response to Issue 5 - Investor Confusion.

[33] According to 2020 Morgan Stanley & Oliver Wyman's Wealth Management - After the Storm, page 8, digital engagement for select leading Wealth Managers in Q1 2020 has seen a 7-10X increase in client engagement across all digital channels, 4-5X increase in digital research consumption, 3-4X increase in number of client-facing webinars, 2-3X increase in number of virtual client meetings.

[34] Access to Advice

digital wealth platforms and/or hybrid (human and digital) or partially-assisted models. Others are investing in digital tools and investor-education offerings to better support OEO clients.

Greater adoption of technology by both firms and investors has been further accelerated by the COVID-19 pandemic.[35] For example, Canadians have embraced technology to meet with financial advisors virtually, open new accounts electronically and make investing decisions efficiently and securely from the comfort and safety of their homes. We need to continue to help facilitate these new options as part of a flexible regulatory model that supports Canadians and how they want to consume financial advice and services.

Self-regulation supports innovation and industry evolution

As outlined in our response to Question A, self-regulatory organizations are widely recognized for their specialized industry expertise. This leads to a stronger understanding of issues and risks, and ultimately enables stronger policy development, oversight and accommodation of new ideas and innovations.

The pan-Canadian mandate of self-regulation is critical in attracting investment and innovation to Canada. It supports a consistent framework for new entrants and innovators, rule consistency across the country, and confidence for stakeholders and market participants.

Barriers to Innovation

Regulatory fragmentation

The current level of regulatory fragmentation in Canada is the largest barrier to innovation according to findings in Evolution of Advice. As discussed in our response to Issue 1, a significant source of structural inflexibility is demonstrated by the additional costs and constraints experienced by dealers who choose to operate different business models to better serve their clients (dual-platform dealers). This significantly constrains discretionary capital available for innovation, with no corresponding incremental value in terms of investor protection, access to advice and services or market integrity.

Some firms have also expressed uncertainty regarding how new ideas would be received, or which regulator(s) would be involved in the approval process. Multiple regulatory approval layers add complexity and confusion, and sometimes delays.

The fragmented nature of the Canadian regulatory framework can also act as a disincentive for international firms to bring their new ideas and platforms to Canada. The path for regulatory approval is not always clear and having to engage more than one regulator for approvals can discourage start-ups who have limited capital and time to spare. As a result, it can take longer for new ideas to come to market in Canada, which delays investor access to new models and services, and increases costs for those waiting for approval.

A consolidation of IIROC and the MFDA would simplify the framework for "FinTech" players, enabling them to focus their resources on developing innovative solutions for one regulatory

[35] Michael Alexander, President of Broadridge Wealth and Capital Markets Solutions reported in a July 2020 press release "We are seeing an accelerated adoption of digitalization and personalization from investors, financial advisors, and wealth firms as a result of the pandemic".

platform, and the largest possible market of dealers. It removes a barrier for new entrants, making it more cost-effective to innovate. In turn, independent and smaller dealers will have greater access to new technology options to enhance their client service offerings.

Multiple rule sets / regulatory arbitrage

Consistent with our response to Question 2.1, having more than one set of rules or different ways to apply the same rules can lead to regulatory arbitrage and acts as a barrier to innovation. When it comes to innovation, inconsistency breeds uncertainty, which can lead to delays in advancing new ideas and sub-optimal client experiences.

Rule sets that are too prescriptive

Rule sets that are too prescriptive also act as a barrier to innovation. Prescribing how a regulatory objective must be achieved and who must achieve it can impede the introduction of new approaches to achieve the objective in more efficient ways, which can result in additional client costs.

Technology

Significant and rapid advancements in technology are challenging the relevance of some existing rules, which were drafted decades ago.[36] This is requiring regulators to consider where technology could help in meeting various regulatory requirements, without compromising investor protection.

There are current rules (IIROC, MFDA, CSA) that assign responsibilities to specific individuals, e.g. Approved Persons. We believe that ensuring appropriate individual accountability is core to meeting regulatory requirements. When it comes to leveraging different technologies in support of meeting regulatory requirements, we should be technology agnostic. In Canada, regulators need to do more to clarify the activities that must be performed by individuals versus those activities for which individuals are accountable but can be automated.

Product and Service Access Challenges

We believe that efficient access to a comprehensive product shelf, including low cost options, is critical, to appropriately meet investor needs and expectations, including one-stop-shopping to receive holistic advice and financial plans. Over 85% of Canadian investors told us they want "one-stop shopping" – the ability to access to a range of products and services without having to go to multiple providers, or open multiple accounts.[37]

We also agree that there are current challenges with Canadians being able to access the advice and services that they need, and that an investor's geographic location can constrain availability of some products and services, especially via the traditional "in-person" advisory model.

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[36] "In some cases, regulations do not keep pace with changing times, become out of date, or are no longer relevant to the economy, but they continue to be enforced. If regulations do not keep pace with the changing times, the public can be put at risk and economic opportunities can be lost. Out-of-date regulations can create economic distortions and carry economic costs." *Making Regulation a Competitive Advantage*, Deloitte (2019), page 15

[37] Access to Advice

There are several contributing factors:

- The IIROC Upgrade Rule makes it more difficult for investment dealers to grow their business by hiring mutual-fund only advisors. This limits the ability for investment dealers of all sizes to more efficiently offer services to more Canadians who wish to invest and receive advice.[38]
- There are current IIROC and MFDA rules that prohibit introduction and back-office service arrangements between IIROC and MFDA firms. Such restrictions make it more challenging for a mutual fund dealer to find cost-efficient ways to provide their clients with access to ETFs and similar products.[39]
- There is lower availability, awareness and adoption of newer online and hybrid service models. Firms have highlighted various challenges in delivering lower cost advice models, including legacy technologies and systems and the fragmented regulatory framework in Canada.[40] Automated and hybrid models are increasingly becoming available to investors, although compared to other markets, adoption appears to be constrained somewhat by investor concerns related to online security and privacy, as well as a belief by 40% of investors that online models carry lower regulatory protection.[41]
- In many cases, an investor's amount of assets can determine their access to advice and certain products and services. As well, if fees are an issue or concern, the low-cost model commonly referred to as order-execution-only or OEO, by definition, does not include the option to receive advice. Making it easier for service providers to deliver lower cost models, without compromising investor protection, would provide greater access, choice and flexibility for all investors regardless of their circumstances.

Taking the first step to consolidate IIROC and the MFDA under the IIROC Proposal would help to reduce regulatory barriers to innovation that constrain firms from introducing new models and services. It would make it easier and less costly to provide a wider range of service offerings to clients, including offerings that are more automated and less customized, improving access to advice and products for Canadians.

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38 For a more detailed explanation of the issue, please see our response to Issue 3

39 For a more detailed explanation of the issue, please see our response to Issue 3

40 Evolution of Advice

41 Access to Advice

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

Response

We support the Targeted Outcome, and offer the following comments:

- An important part of investor protection is ensuring appropriate access to advice and a broad range of products and services
- There are certain aspects of the framework that need to be fixed, e.g. the rules, to provide the necessary certainty to all stakeholders. For the purposes of this response, a "flexible regulatory framework" is one that includes/allows for a:
    - registration category framework that allows for application of regulatory requirements according to the business activity conducted, but maintains core rule consistency for all business models, across all regulators
    - risk-based and proportionate approach, in order to accommodate a wide range of different and innovative business models
    - reduction in duplicative approval layers, to improve the efficiency with which innovation can be accommodated by the regulatory framework.

SRO consolidation would simplify the framework and make it easier and more cost-effective for innovators.

Issue 5: Investor Confusion

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

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

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

a) What key elements in the current regulatory framework (i) mitigate and (ii) contribute to investor confusion?

b) Describe the difficulties clients face in easily navigating complaint resolution processes.

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

Response

While each of the SROs and CSA regulators continue to focus on ways to help investors understand their respective roles and the protections available, we agree that the current

fragmented and duplicative regulatory framework has contributed to investor confusion and their ability to make informed decisions.[42]

Consider that mutual fund activities can be undertaken by both mutual fund and investment dealers, often in the same locations. Depending on the dealer's business model and province(s) of operation these activities may be regulated by either of the two SROs and the AMF/CSF in Québec. Some of the activities undertaken by investment dealers regulated by IIROC are also undertaken by exempt market dealers and portfolio managers who are directly regulated by the CSA and may not have investor protection fund coverage.

As such, it is not surprising that investors can have difficulty understanding:

- what products and solutions are available from which types of firms and advisors
- who regulates what
- the nature of the protections available
- how to navigate the system if they have questions and/or concerns.

IIROC has been tracking investors' awareness and understanding through comprehensive quantitative surveys it commissioned in 2017 and more recently in 2020. IIROC's goal was to track whether mandatory membership disclosure amendments that took effect in 2017 and 2018 had positively impacted investor awareness levels. We also wanted to measure awareness, understanding and perceptions regarding the regulation of the investment industry so that we could create and deliver meaningful education programs to help Canadians become more informed investors.

Highlights from the 2020 Tracking Survey of 2,500 Canadian investors include:

- 70% of investors indicate a general awareness that the investment industry is regulated, however 41% agree that they do not really understand how the industry is regulated
- Levels of understanding of the role of regulators, and how the industry would protect investors are varied
- Investors are largely unaware of what advisors are licensed to recommend or sell
- The majority of investors (85%) believe that it is important to have an understanding of the regulators, and 73% are interested in learning more about the regulation of the investment industry.

As the current pandemic has underscored, many investors need and want advice. Results from our Access to Advice research found that the majority of Canadians want access to financial

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[42] Ian Russell, president of the Investment Industry Association of Canada reported in a Globe and Mail article *What kind of modernization does the Securities Act really need?* that "The complicated structure of securities registrants and allowable activities, and the intertwined regulatory framework, is outmoded and outdated – incompatible to the increasingly integrated wealth management process. It inconveniences and confuses investors, results in unnecessary costs and inefficiencies from excessive technology and systems, and complicates internal firm processes, creating regulatory barriers that prevent investors from accessing the spectrum of wealth products and services."

products and services from one place.[43] The same product or service regulated by multiple SROs and CSA regulators, and offered by multiple registration categories, can cause confusion and additional complexity for investors. Furthermore, non-standardized use of titles across all registration categories can also mislead investors, further compounding the issue.[44] Accordingly, investors may not be aware of the limited products, services, and corresponding advice offered by certain registration categories. Similarly, they may not be aware of protections available if a firm becomes insolvent, and where to complain if an issue arises.

IIROC has a dedicated Complaints and Inquiries department to help Canadian investors when they have questions or concerns. During the past fiscal year, in support of the overall regulatory framework, our Complaints and Inquiries team redirected 569 of the complaints and inquiries from investors to other regulators as appropriate, and an additional 178 to the Ombudsman for Banking Services and Investments (**OBSI**) and Canadian marketplaces.

To better understand investor experiences and perceptions of the complaint-handling process and to help complainants better navigate the complex regulatory system, IIROC is currently undertaking qualitative research with investors who have complained directly to IIROC and who may have used the service of OBSI.

Results from this research so far (33 one-on-one interviews have been completed) confirm that many investors have limited understanding of how regulation works and where to turn if they have complaints. Continuing to build investor understanding in this area should be a focus for all stakeholders, including the new consolidated SRO.

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

Response

We support the CSA's targeted outcome. Consolidation of the two existing SROs under IIROC's Proposal would be an important first step in alleviating investor confusion. A new single SRO that brings together IIROC and the MFDA presents an opportunity to re-brand the organization in a way that could increase investor awareness.

After consolidation, the new SRO could continue to support the CSA in a comprehensive policy review of other registration categories regulated directly by the CSA.

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[43] Investor interest in one-stop shopping was also discussed in Evolution of Advice

[44] IIROC is participating in the Financial Services Regulatory Authority of Ontario Title Protection consultation.

Issue 6: Public Confidence in the Regulatory Framework

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

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

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

a) Describe changes that could improve public confidence in the regulatory framework.

b) Describe instances in the current regulatory framework whereby the public interest mandate is underserved.

c) Describe instances of how investor advocacy could be improved.

d) Describe instances of regulatory capture in the current regulatory framework.

e) Do you agree, or disagree, with the concerns expressed regarding SRO compliance and enforcement practices? Are there other concerns with these practices?

Response

The IIROC Proposal addresses the issues highlighted in the stakeholder comments and supports achieving the targeted outcome. A consolidated, supervised SRO would improve clarity, reduce investor confusion and make it easier to increase investor awareness of regulation and the protections available. A clear and consolidated approach to compliance and enforcement across the industry will strengthen investor protection. Together, this should improve public confidence in the regulatory framework.

We know that regulation is important to investors as evidenced by the various surveys we have conducted with the aid of national and independent research firms we engage. We also believe that investors are generally confident in the regulatory framework as it is reflected in IIROC regulation. Streamlining the regulatory framework under the IIROC Proposal would reduce confusion and increase investor awareness and confidence.

Our Access to Advice research surveyed current and aspiring investors. Highlights include:

- 87% of current investors and 67% of aspiring investors feel it is important that investment advice come from a regulated firm or individual
- 76% of current investors and 48% of aspiring investors said they are confident the investment industry in Canada is properly regulated.

In the 2020 Tracking Survey, out of a sample of 2,500 Canadian investors:

- 39% responded that they trust the regulatory system that oversee the investment industry to protect their interests as an investor, while 28% said they trust the federal government and 15% trust the provincial government to protect the interests of investors
- 67% said that they are moderately and softly confident in the regulatory bodies that protect investors. This was a 15 percentage point increase from the 2017 (52%) benchmark awareness survey
- most are unaware that advisors are limited to recommend only those product types for which they are regulated and that investors may have to pursue additional accounts or advisors if they want access to the full range of investment products.

Overall, The Strategic Counsel stated that "weak levels of awareness and understanding of the regulatory environment for the investment industry in general provide significant context for both trust and confidence assessments." They also concluded that "this lack of clarity around who and what is regulated, and how regulators protect investors, is likely a driver of the trust and confidence that investors express at the systemic and market levels, and the awareness investors have of specific regulatory bodies such as IIROC."

Our responses to specific stakeholder comments follow below.

Public Interest Mandate

We believe that IIROC's governance structure effectively manages conflicts of interest and ensures different stakeholders are fairly represented, so that we achieve our public interest mandate.

Directors who are independent from the industry (including the CEO who previously served as Deputy Superintendent at the Office of the Superintendent of Financial Institutions of Canada) make up a majority of the IIROC Board. The majority of our current and past Independent Directors have never worked for an IIROC-regulated firm.

IIROC has had, and will continue to have, Directors with direct experience in retail investor protection issues. This was discussed at length in the IIROC submission to the Ontario Capital Markets Modernization Taskforce.

With respect to term limits, IIROC believes that an eight-year term limit for Directors strikes an appropriate balance between continuity and renewal on the IIROC Board.

Finally, the criteria for an individual to qualify as an Independent Director of IIROC are extensive and rigorous, extending to both associate and affiliate relationships, and to upstream and downstream relationships. This is in addition to the "fit and proper" requirements for all Directors.

Formal Investor Advocacy Mechanisms

IIROC regularly engages with retail investors through qualitative and quantitative research with the assistance of an independent national research firm. IIROC's Investor Research Panel of 10,000 Canadian investors provides opportunities for direct input on a range of issues impacting investors and their confidence in the capital markets. This input also informs management's and the Board's review of proposed rules and other requirements as they relate to retail investors, including:

- 1,507 current and 501 aspiring investors' views on access to investment advice[45]
- 1,000 investors' awareness of and familiarity with policies and procedures to protect vulnerable investors, such as "safe harbour" and choosing a trusted contact person[46]
- 1,011 investors' views on how breaches of IIROC rules and/or wrongdoing could be dealt with through alternative measures.[47]

For example, we are currently conducting research with complainants to better understand their experiences and perceptions of our complaint-handling process.[48]

We complement our quantitative research with qualitative focus groups on issues such as Know Your Client.

Investor Advisory Panel

Early this year IIROC announced plans to establish a pan-Canadian Expert Investor Issues Panel that will enable individuals with a wide variety of experience and expertise related to investors to provide direct input on all relevant investor issues, especially those that impact access to advice and services and investor outcomes and confidence.[49] We are reviewing panels from other regulators and jurisdictions, such as the OSC's Investor Advisory Panel, the AMF's Financial Products and Services Consumer Advisory Committee, and FINRA's Investor Issues Committee. Critical to this panel will be individuals with backgrounds in investor education, consumer outreach, seniors and/or vulnerable investor issues, professional regulation, financial services, government, public policy, and/or academia.

Regulatory Capture

We do not believe that IIROC exhibits any of the characteristics of regulatory capture set out in the Consultation Paper. Our governance structure, as well as CSA oversight (described in more detail below), ensure that we effectively fulfill our public interest mandate.

While we believe that we have sufficient tools and resources to obtain accurate information from industry and to deter industry wrongdoing and to hold wrongdoers accountable, we will

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45 Access to Advice

46 Awareness and Attitudes Related to Provisions to Protect Vulnerable Investors and Investment Firms/Advisors, IIROC and The Strategic Counsel (2019)

47 A Survey of Canadian Investors' Views on Alternative Disciplinary Proposals, IIROC and The Strategic Counsel (2018)

48 IIROC Notice 20-0137, IIROC Priorities for FY2021 (2020)

49 IIROC to form expert investor issues panel for valuable input on consumer issues (2020)

continue to vigorously pursue additional enforcement tools and resources. This includes the authority to collect fines through the courts, strengthen our investigations and disciplinary hearings, and gain protection from malicious lawsuits when acting in the public interest. We have been successful in obtaining the full "enforcement toolkit" in New Brunswick, Prince Edward Island, Nova Scotia, Québec and Alberta. We have obtained partial enforcement authorities in all remaining provinces and territories, with the exception of Newfoundland.

We have already begun using the additional investigative tools provided by some of the provinces. In doing so, we have been able to better identify wrongdoing and ensure that the best evidence is obtained.

Moving forward, we are also taking steps toward implementing new initiatives that would make our enforcement more flexible and responsive, and would enable us to better support investors who suffer losses. One initiative has been our alternative forms of discipline proposal that aims to provide a more-tailored, proportionate and timely approach to Enforcement matters at IIROC. We are still in the public consultation phase of this initiative, but hope to see its implementation later in 2020.

SRO compliance and enforcement concerns

We believe that our enforcement activities are highly transparent as we make every effort to ensure the public understands our process and outcomes achieved. As mandated by our Recognition Orders, we publicly announce (simultaneously in both official languages) all enforcement proceedings and ultimate decisions and hearings are open to the public and the media. IIROC is one of the few organizations that publishes sanction guidelines that set out the principles and factors applied in determining the appropriate penalties imposed against those who break our rules. Complainants are kept informed of the status of our investigations and prosecution. IIROC also publishes annual Enforcement Reports which, among other things, provide details regarding the volume and nature of work conducted during the year. We also publish the names of all individuals who have outstanding fines who are not allowed to work for IIROC-regulated firms if their sanctions have not been met.

IIROC objectives in sanctioning are consistent with other securities regulators and professional disciplinary bodies. As confirmed by the Supreme Court of Canada,[50] the purpose of sanctions in regulatory proceedings is to protect the public interest by deterring future misconduct. IIROC also recognizes victim restitution compensation as a desired outcome within the greater regulatory context. IIROC in particular treats victim compensation by wrong-doers as a significant factor when determining how to proceed and which penalties to impose in our disciplinary cases. We are also exploring ways to return to harmed investors disgorged funds collected from an advisor or firm disciplined by IIROC[51].

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[50] *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 at para. 43.

[51] IIROC Notice 20-0137, IIROC Priorities for FY2021 (2020)

CSA Oversight of SROs

Section 2 of the Consultation Paper describes the robust CSA oversight framework for IIROC. The CSA and IIROC have been actively engaged in enhancing this framework over the past several years, expanding the reporting requirements in 2018[52] and proposing other enhancements in 2020.[53]

While we believe that IIROC's rule exemption process does ensure accountability to the CSA, we also note that the proposed enhancements to IIROC's Recognition Order require IIROC to provide the CSA with immediate notification of our receipt of an application for a Board exemption or amendment to a Board exemption that could have a significant impact on: (i) IIROC members and others subject to IIROC's jurisdiction, or (ii) the capital markets generally including, for greater clarity, certain stakeholders or sectors.

With respect to oversight reviews, we support the CSA's risk-based approach. On an annual basis, the CSA:

- Identifies the key inherent risks of each functional area or key process based on:
    - reviews of internal IIROC documentation (including management self-assessments and risk assessments)
    - information received from IIROC in the ordinary course of oversight activities (e.g. periodic filings, discussions with staff)
    - the extent and prioritization of findings from the prior oversight review and
    - the impact of significant events in or changes to markets and participants to a particular area
- Evaluates known controls for each functional area
- Considers relevant situational/external factors and the impact of enterprise wide risks on IIROC as a whole or on multiple departments
- Assigns an initial overall risk score for each functional area
- Collaborates with IIROC to identify and assess the effectiveness of other mitigating controls that may be in place in specific functional areas
- Assigns an adjusted overall risk score for each area
- Uses the adjusted risk scores to determine the scope of the review.

We agree with the CSA that this approach currently ensures that oversight reviews are focused on the most important aspects of IIROC's public interest mandate.

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[52] OSC Bulletin Volume 41, Issue 15 (April 12, 2018), page 3009, *Variation and restatement of recognition order of a self-regulatory organization to clarify and update reporting requirements*.

[53] OSC Bulletin Volume 43, Issue 31 (July 30, 2020), page 6173, *Changes to Harmonize and Streamline the Oversight of IIROC*.

Finally, we have described in detail[54] the steps we are taking to tailor our compliance programs to firms of all sizes and business models, as well as managing regulatory burden and costs for smaller firms.

Instances in the current regulatory framework whereby the public interest mandate is underserved

As we described in the IIROC Proposal, technology-driven transformation is not only changing the products, services and nature of the advice delivered to Canadians, but is also changing behaviours by enabling Canadians to access and consume financial services the way they want. This changing relationship between investors and the investment industry is placing tremendous pressure on the existing regulatory framework—a framework based on assumptions that no longer universally apply: the concepts of one customer, one account and the idea that financial products are distributed in silos.

To deliver what investors want, the investment industry must divert significant resources away from client service and product innovation — just to comply with duplicative and overlapping regulation. As a result, the current SRO framework denies many Canadians robust access to the advice, products and services they deserve. This needs to change.

Consolidating IIROC and the MFDA would reduce unnecessary duplication and process and would increase Canadians' understanding of regulation and their ability to navigate through the system. In addition:

- investors would be able to have a seamless graduation as their investment needs change over time, from fairly simple products and advice to more complex advisory channels and solutions
- more products at lower cost, e.g. a full suite of ETFs, would be available to many more Canadians
- clients would not have to re-open accounts and/or change firms/advisors as their investing needs change, resulting in reduced "paperwork burden" and improved consolidated reporting to investors
- elimination of regulatory duplication would offer cost savings that could be reinvested in innovation and client service.

[54] *IIROC Compliance Report: Helping Firms With Compliance* (2019); *IIROC Policy Priorities – Update Report* (2020)

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

Response

We agree with the targeted outcome. We suggest that the CSA consider adding a reference to "streamlined and proportionate" regulation as an objective for self-regulation.

The IIROC Proposal supports achieving the targeted outcome. With an immediate focus on bringing enforcement departments together, a clear and consolidated approach across the industry should strengthen protections for investors.

A consolidated, supervised SRO would provide clarity, reduce investor confusion and make it easier to increase investor awareness of regulation and the protections available. Together, this should improve public confidence in the regulatory framework.

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

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

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

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

a) Does the current regulatory structure facilitate timely, efficient and effective delivery of the market surveillance function? If so, how? If not, what are the concern?

b) Does the continued performance of market surveillance functions by an SRO create regulatory gaps or compromise the ability of statutory regulators to manage systemic risk? Please explain.

Response

Fair and orderly markets drive investor confidence, which in turn drives participation in our markets. Increased levels of retail client participation on our marketplaces heighten the importance of market oversight.

As a pan-Canadian regulator we apply a consistent standard of market oversight using a common set of trading related requirements, which reduces confusion and potential harm to investors.

We believe that the market regulation function is an integral part of the regulatory system contributing to the management of systemic risk and is directly connected with conduct and

prudential regulation of investment dealers. Together they support markets that operate efficiently and with integrity and support investor protection.

IIROC's operational expertise is complementary to the work done through statutory regulation, and regulatory efforts are coordinated where applicable. This was evident during the 2008 financial crisis where statutory regulators placed certain restrictions on short sales that were operationalized and monitored by IIROC. The comprehensive data set that we collect from all marketplaces is provided to the CSA on an ongoing basis to assist with their statutory functions and responsibilities. Data is provided efficiently and without the need to duplicate any process. Where appropriate, we coordinate with the CSA to analyze and interpret the data based on our operational expertise.

IIROC's market regulation function does not operate in isolation and is carried out in coordination with the member regulation function. Monitoring of a dealer's trading conduct aligns with both its financial and business conduct and provides a complete picture of a dealer's overall compliance health. This integration enables IIROC to simultaneously consider all aspects of a dealer's activities, whether market or client facing, in any decision or action it may pursue to both increase the efficacy of oversight and introduce efficiencies to reduce the compliance burden on the investment dealer community. This leads to better outcomes where all aspects of a client's relationship with a dealer are considered as part of the decision-making process. Many of these synergies and efficiencies are also present in our enforcement activities. It is the recognition of this synergy that resulted in the merger of RS and the IDA in 2008.

IIROC leverages its market surveillance systems, which are an integrated part of its information technology infrastructure, and data for IIROC regulatory purposes other than core market regulation functions. These efficiencies may be lost through separation of the market regulation function. Furthermore, the separation of these systems from our integrated infrastructure may be complex and would likely require considerable resources and cost with no commensurate benefit.

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

Response

We believe that the CSA target outcome for issue 7 is described appropriately and that this outcome is currently being achieved based on the discussion above. The application of a single set of requirements that are applicable to all investment dealers for their trading-related activities, regardless of jurisdiction, coupled with statutory oversight leads to an effective system to monitor and manage risk.

Conclusion

Thank you to the CSA for providing this opportunity to discuss these important issues, and for the wide range of stakeholders who have contributed their views and continue to participate in this process.

We believe it is critical to build on what is working, and with minimal cost and disruption, create a streamlined platform on which to continue the evolution of the SRO model in partnership with the CSA. Certainly, everything the financial sector has learned through the experience of the COVID-19 pandemic supports the need to move the system forward in a practical and timely manner.

We would like to thank the CSA Sub-Committee for their commitment to a transparent and collaborative process. We look forward to continuing the dialogue with the CSA and all stakeholders to evolve self-regulation in Canada to improve outcomes for investors.