October 22, 2020

BY EMAIL

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

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

Me Philippe Lebel, Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de le Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) GIV 5C1
Fax: 514-864-6381
Email: Consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames,

Re: CSA Consultation Paper 25-402

Consultation on the Self – Regulatory Organization Framework

About Portfolio Strategies Corporation

Portfolio Strategies Corporation ("PSC") is a Calgary-based dealer that is a member of the Mutual Fund Dealers Association of Canada and registered as a Mutual Fund Dealer and Exempt Market Dealer in Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, and the Northwest Territories. We also founded Portfolio Strategies Securities Inc. in April 2008 under the IDA (now IIROC), so we have experience running dual platform dealers.

We appreciate the opportunity to provide comments on the current Self-Regulatory Organization framework. The review is very timely. Our firm is directly affected by the "two SRO" model as we strive to offer expanded product lines to our retail wealth clients at a reasonable cost. We have also studied the MFDA and IIROC proposals on SROs in great detail and have come to the conclusion that it is time for a consolidated SRO.

Opening Comments

The MFDA was created over twenty years ago to regulate a rapidly growing mutual fund industry, at a time when the CSA members did not have the resources to regulate mutual fund dealers at an acceptable level of oversight. Rather than use public funds to enhance regulation of these dealers, it was decided that this unique component of the investment industry should be a stand-alone SRO, but more importantly it was to be self funded. Around the same time the IDA had been a long-established SRO, whereby its dealer members offered all investment product categories, with little emphasis on mutual funds. Given such disparate product platforms the decision to create the MFDA was the correct decision for the times.

Today the investment industry has evolved at a rapid rate. IDA/IIROC firms have shifted towards more conservative managed money solutions, including mutual funds and funds of funds structures, and de-emphasized individual equity and fixed income portfolios created at the individual advisor level. MFDA dealers are now looking to offer ETFs and government bonds to their retail clients, products that used to be the exclusive purview of IIROC firms. It would appear that the two SROs have gravitated to some sort of middle ground where the operation of two distinct SROs no longer makes sense. Both SROs have their own unique guidelines and rules, written in a bygone era by staff that have never actually worked in the industry and not adapted to the needs of today's retail wealth client. In our opinion, the current magnitude of ever-increasing rules from both SROs has not led to better client outcomes. Account opening requirements and endless disclosures have become a true irritant to retail clients who are more interested in discussing their own goals and objectives than they are in dealer self preservation initiatives thrust upon dealers by both SROs and the CSA.

General Consultation Questions:

Response:

a) -We agree that the SRO must be national, including Quebec if possible, to truly realize the efficiencies gained from moving to a single SRO model.
-SRO business models have converged over the last twenty years, to some degree. The current two SRO model is highly inefficient.
-While both SROs have their own Investor Protection Funds, they could be merged for further cost savings and efficiencies.

b) -There are huge cost differences for membership at the two SROs, particularly for mid size independent firms where the MFDA fees are considerably higher than IIROC's fees (almost $100,000 higher at the MFDA, with nil additional value for our firm). At the other extreme, the minimum MFDA membership fees are roughly $3,000 – which is completely unrealistic and does not cover the MFDA's regulatory oversight costs for these small dealers. Medium to large MFDA members are subsidizing the low membership fees for small members, which is obviously and unmistakably unfair. We question whether the MFDA has ever increased their minimum membership fees since they became an SRO almost twenty years ago.
-As the investment industry has evolved over the last twenty years, the MFDA has not kept up. The MFDA seriously lacks expertise in the areas of exchange traded funds, government bonds, exempt market products, investment fund manager duties, to name just a few. The MFDA, as our SRO, should be guiding its members in these areas as to "how to". In reality, it's the other way around – members are having to educate our SRO.

c) -In our opinion the two most important CSA Targeted Outcomes are
-A regulatory framework that minimizes redundancies that do not provide corresponding regulatory value.
-A regulatory framework that provides consistent access, where appropriate, to similar products and services for registrants and investors.

d) -No other documents or quantitative information/ data come to mind that the CSA should consider in evaluating these issues.

Duplicative Operating Costs for Dual Platform Dealers

Question 1. 1 : *What is your view on the issue of duplicative operating costs, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.*

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

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

Response:

We agree that the issue of duplicative operating costs cause higher than necessary operating costs, and prevent dual platform dealers from realizing economies of scale. One opportunity to lower operating costs would be to permit part time CCOs and part time CFOs to support both dealer types (MFDA and IIROC), whether the firms are related in any way or not, assuming that both dealers have capable compliance and finance staff to properly support those CCOs and CFOs.

We also agree with the comments on duplicative "non- regulatory" costs, and information technology systems. Due to the very strict back office software requirements of both SROs, with no meaningful benefits to investors on a cost benefit analysis basis, the barriers to entry for new back office software vendors are extremely high, at substantial cost, thus stifling competition in this critical area. IIROC and MFDA dealers seem stuck with the same cumbersome and outdated systems that were sold to them many years ago. There are really no new entrants in the information technology space for dealers, due to the very prescriptive, and sometimes uninformed, guidelines from both SROs.

The issue of multiple fees for dual platform dealers is very real and does not result in a corresponding increase in regulatory value. As stated earlier, our MFDA fees are almost $100,000 higher than our fees would be under IIROC, and we can assure you that we receive "nil" value for that additional $100,000. We feel that we are being overcharged so that smaller firms that are not paying their fair share of regulatory costs, can be subsidized.

a) -Duplication of compliance department costs, with no meaningful benefit.
   -Incompatible back office systems to be maintained due to very specific SRO requirements without obvious investor benefits.
   -A wholly unnecessary IIROC demand for more costly nominee accounts (because of outdated thinking that the CIPF is the most important thing when dealing with retail clients – it isn't) when no cost client name accounts at mutual fund companies are considered by most dealers and clients to be just as secure. This overemphasis on nominee accounts by IIROC causes retail investors to pay annual RRSP and RRIF plan fees of anywhere from $100 to $150 per year on accounts worth as little as $2,000. How can anyone argue that this is fair value for money spent?
b) We can't think of one reason whereby these duplicative costs are necessary and warranted.
c) Mutual fund dealer clients now want, and fully expect, access to ETFs, as well as liquid government bonds that offer safety and much more variety and diversity over GICs. Under the existing two SRO structure, MFDA firms now have to contract with IIROC firms (that they compete against) for clearing their ETF and bond trades. These trading costs and custody fees must inevitably be passed on to their retail clients, when no such fees exist today for self-clearing MFDA firms (likely 99% of dealer cleared business today) .

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

Response :

We feel that the CSA targeted outcome for issue 1 is described appropriately. This outcome would be best achieved by rolling the MFDA into IIROC due to IIROC's demonstrated expertise in ETFs, bonds, private equity and debt, and long established margin practices.

Product-Based Regulation

Question 2. 1 : *What is your view on the issue of product-based regulation, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position .*

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

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

Response :

We would agree that SROs and the CSA continue to focus on products sold, using a "tick the box" method of product-based regulation, when they should be focused on the financial, estate, tax or retirement planning work which is what all retail clients are interested in getting assistance with. The products offered by dealers are simply a means to an end, after the planning work is done and appropriate product solutions are offered. Most regulators seem to have the perception that commission-based products come first, and the planning work simply fits the recommended product and comes second. Financial advisors rely on long term relationships with their clients to make it financially worth their while ; no professional financial advisor will risk that by selling one potentially unsuitable high risk product.

Having dealt with both SROs we can say that the MFDA definitely tends to be very prescriptive, with a "tick the box" method of product-based regulation, whereas IIROC tends to be more principles-based.

Some of the differences we have observed between the two SROs are the following :

- When assessing mutual funds with a "medium-high" risk tolerance, it would appear that IIROC will accept the mutual funds as "medium" as part of an overall portfolio, whereas the MFDA would argue that the stated fund should be "high" risk. This is part of their ultra conservative, outdated philosophy that advisors are "guilty until proven innocent". As stated above, the planning work comes first, and the recommended product comes second.
- At IIROC, margin accounts have been acceptable for decades and could be a source of ready cash for clients who need funds on short notice, without having to liquidate securities at an inopportune time. At the MFDA, margin accounts are not permitted. All borrowing to invest is considered leverage, and is inherently bad in their opinion. Conservative leverage is a sound investment strategy for some clients (capital asset pricing model) but this, unfortunately is totally lost on the MFDA.
- Best execution for ETFs means speed of trade at the MFDA, and nothing else. Under IIROC there are at least three or four components of best execution. (Price, speed, certainty, total cost).
- IIROC would appear to categorize mutual fund dealers selling professionally managed third party funds and select exempt market products as "low risk" dealers. The MFDA tends to categorize these very same dealers as "high risk" simply because they sell exempt market products such as flow through shares or first mortgage MICs and MIEs, to their higher income, or high net worth clients.
- Flow through shares are sold to higher income clients for tax planning purposes, often with a six to eighteen month hold period. They are **not** held as part of a longer term, balanced portfolio. To this day MFDA sales compliance and MFDA enforcement staff refuse to accept a stand alone plan for tax planning purposes that holds flow through shares (an exempt market product for 100% of plan holdings) to be an acceptable business practice. They simply are not part of a long term, balanced portfolio.

a) With all due respect to the CSA, as stated we think this is the wrong question. The advantage of selling mutual funds under the MFDA model is that client name accounts with no annual trustee fees can be offered, thus saving clients unnecessary costs. IIROC insists on nominee accounts, due to a misguided notion that CIPF protection is the most important aspect of investing. We would like to think that IIROC might consider reviewing this stance, since free client name accounts for small amounts (RESPs, RDSPs, LIRAs, starter RRSPs) are in the client's best interest. One of the services mentioned in this section is discretionary portfolio management, which could be as simple as a client selected "fund of funds" asset allocation model. This is not permitted under any circumstances at the MFDA; firms are forced to engage external portfolio managers for simple rebalancing of asset classes, at considerable cost that will be passed on to our retail clients.

b) Our comment would be similar to a) above but we would add that directed commissions are available to MFDA advisors outside Alberta, with no apparent regulatory risk whereas IIROC does not permit this.
c) If a representative has sufficient proficiency to sell a type of product, they should not be limited to which SRO they must register with for such sales. We can't think of any public interest reasons for maintaining the current two SRO framework. The cost structures under the two SROs are very different; retail clients should not be negatively impacted by potentially unnecessary cost structures that they do not understand, but are being asked to pay for.
d) Under both SROs the regulatory requirements for operating a simple business model appear to be well in excess of what should be required, and provide no public interest protections. For example, some boutique IIROC firms focused on a few capital raises per year, from institutions or other sophisticated investors, are still subject to in-depth business conduct compliance and financial compliance audits, and potentially trade desk audits. This is regulatory burden at its worst, and provides no measurable protections for institutions or sophisticated investors, in our opinion.

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

Response:

The CSA targeted outcome for issue 2 is described appropriately.

Regulatory Inefficiencies

Question 3. 1 : *What is your view on the issue of regulatory inefficiencies and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.*

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

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

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

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

Response:

The stakeholder comments regarding the inability of mutual fund dealers to easily distribute exchange traded funds are painfully accurate. Our firm started to look at offering ETFs roughly five years ago from a public interest standpoint. Initially IIROC firms claimed that ETFs (that meet the definition of a mutual fund) were a complex product that only IIROC registrants were capable of selling - interpretation : These IIROC firms didn't want any MFDA firms "playing in their sandbox". They argued for exclusivity of ETFs, at a time when most of these retail clients had insufficient investable assets to merit any IIROC firm's attention. The CSA, on the other hand, did appear to see the benefits of offering ETFs to the mass affluent. So, we had the CSA onside, then IIROC and IIROC firms onside once the regulatory responsibilities and kinks were worked out. At no time did we see that the MFDA, as our SRO, was working on their member's behalf to be able to launch ETFs. This, after five years of publicly stating "it's a great idea whose time has come, and we support this initiative". If anything, the MFDA got in our way, quoting "best execution" rules that they clearly do **not** understand and do not have rules for, plus UMIR that does not apply to us. Suffice it to say, MFDA senior management attempted to dictate IIROC rules to MFDA dealers, when they should have left IIROC to regulate IIROC member firm involvement in ETF trades for mutual fund dealers.

a) Regarding comparable rules between SROs, and as stated above, the MFDA does not appear to have any rules about "best execution", yet that did not stop them from pretending they had such a rule (which they do not understand) covered under an unrelated rule about client best interest. We were forced to implement cumbersome work arounds at additional cost that will be passed on to our clients in the form of fees or reduced planning time.
b) One of the main regulatory barriers to the distribution of ETFs is the inability of mutual fund dealers to access the markets where ETFs are traded. Mutual fund dealers are required to engage unrelated IIROC firms to conduct ETF trades, then build cumbersome, potentially expensive work arounds for client reporting (confirmations and statements), fund facts delivery etc. We could argue that ETFs that meet the definition of a mutual fund, overstated trading risk aside, are no riskier than mutual funds, yet fund facts must be delivered "pre trade" for mutual funds under current CSA rules, whereas fund facts can be delivered "post trade" for ETFs. The discrepancy or disconnect is lost on us, to be perfectly honest, and it is difficult to explain to our retail clients.
c) There are no regulatory risks that make it difficult for any one regulator to identify or effectively resolve issues that come to mind, other than the fact that MFDA staff lack sufficient knowledge of ETFs to properly regulate their mutual fund dealer members.

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

Response:

The CSA targeted outcome for issue 3 is described appropriately.

Structural Inflexibility

Question 4. 1 : *What is your view on the issue of structural inflexibility, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible , please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.*

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

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

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

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

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

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

Response:

We agree with the stakeholder comments on structural inflexibility listed in this paper, and will expand on them in our answers to the specific questions below. A consolidated SRO that allows dealers to evolve their business models to meet investor demand for expanded products and services would be in the public interest, as long as licensed representatives have the proficiency to offer such products and services.

a) The current regulatory framework makes it extremely difficult for mutual fund dealers to offer expanded product lines (ETFs, government bonds) to their clients, which our retail clients are starting to expect. We have been forced to build costly work arounds due to the fact that established IIROC and MFDA back office systems do not transmit data to one another, nor do system providers have any desire to work with their competitors by sharing their API (application programming interface). System providers would much rather build more costly, and sometimes inefficient data solutions for their captive dealer clients.
b) While the CSA has become quite enamoured with robos for their ability to deliver ETF solutions to the masses, both SROs are less so. MFDA and IIROC staff appear to lack knowledge or expertise in the robo space. When our firm tried to launch a robo a couple of years ago using actively managed pools of ETFs and prospectus sold mutual funds, we were given conflicting guidance from the MFDA and CSA as to whether our robo should be a referral agreement (less attractive) or an "on book" arrangement. We eventually abandoned the joint venture because the regulatory hurdles, and increasing costs, seemed insurmountable.

   Further, there seems to be a real disconnect at the CSA on how MFDA and IIROC dealer new client accounts should be opened. Robos are seemingly able to cut corners and eliminate face to face client interaction to discuss regulatory disclosures, and sign for them, while at the same time MFDA and IIROC member firms are held to a much higher standard at the account opening stage. At an IFIC conference a few years ago an attendee asked a regulatory panel that included the OSC why it is that "I can open a new account at a robo in about four minutes, but if I go through a traditional dealer the new account process can easily take an hour". There was no response given by the OSC as to why such a disparity between distribution methods is allowed to exist or encouraged by some CSA members. The disconnect from our regulators is quite troubling and is an impediment for dealers to utilize technological advancement to offer expanded product lines and services to their retail clients.
c) Aside from the technology challenges listed above, enhanced regulatory requirements for new account opening, monthly or quarterly client account statements, trade confirmations, etc. have increased dealer operating costs considerably, to the point where many dealers have had to establish minimum client account requirements to allow them to operate client accounts in a profitable manner. As many IIROC firms are "introducing" dealers to a select few "carrying" dealers that charge their "introducing" dealers for every aspect of operating these client accounts, IIROC member minimum client account requirements are considerably higher than any account minimums for MFDA members who usually self clear. Current regulatory requirements have created a framework with an advice gap, leaving millions of Canadian retail clients without easy access to these additional products and services. In our opinion a standard CSA response such as "they can use a robo" is dismissing the value of advice for a client segment that needs advice the most.

d) The creation of a consolidated SRO with “product/service” tiers based on advisor proficiency (mutual funds/ETFs/government bonds vs full service offerings including equities, fixed income (including corporate debt)) would give retail clients equal access to all available products and services. As for servicing rural or underserved communities, regulatory assistance and approval for dealer use of digital onboarding and servicing initiatives would alleviate this problem/issue.
e) Client preferences are for increased access to more products and services at MFDA firms, to fill the gap between “order execution only” firms with no advice, versus traditional IIROC member firms that have high minimum account size requirements. MFDA firms have had to build costly work arounds to accommodate client requests for ETFs because current SRO accepted back office systems do not transmit data between MFDA and IIROC member firms.

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

Response:

The CSA targeted outcome for issue 4 is described appropriately.

Investor Confusion

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

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

a) What key elements in the current regulatory framework (i) mitigate and (ii) contribute to investor confusion?
b) Describe the difficulties clients face in easily navigating complaint resolution processes.
c) Describe instances where the current regulatory framework is unclear to investors about whether or not there is investor protection fund coverage.

Response:

There is no doubt that investors are unlikely to know where to turn if they have questions or a complaint about their financial advisor or the member firm. To the general public, they hold an investment, and the distinction between MFDA, IIROC, or a CSA registration category will not be clear to them. While it is true that dealers are required to disclose their membership in an SRO such as the MFDA or IIROC, the disclosure stops there and it will not be obvious to the customer what the product differences, or services offered, will be between the two SROs.

Further, CSA registration categories such as exempt market dealer, portfolio manager, or scholarship plan dealer, do not require membership in either of the two existing SROs, so consolidating the two SROs into one SRO will not eliminate investor confusion ; it will simply reduce the possible number of regulators that can lend assistance down to two regulators, from three regulators.

a) -The website search tool "aretheyregistered" helps to mitigate investor confusion by pointing investors to the advisor's dealer name and address, but it does not point them to the appropriate SRO, such as MFDA and IIROC. If it is a CSA registered firm, it still is not obvious which CSA member clients should turn to if they have questions or a complaint.
-The fact that investors do not know the difference between the MFDA, IIROC, or CSA contributes to investor confusion. Further, when you throw segregated funds into the mix none of the three regulators mentioned above are likely to provide a sounding board for those clients, unless they can demonstrate that the segregated funds were purchased from an SRO member firm, or CSA registrant.
b) In most cases clients would likely prefer to complain directly to the regulator that oversees the financial advisor or dealer. Some clients may mistakenly assume that all dealers will automatically back their own advisor, regardless of the facts. By going straight to the overseeing regulator, they may feel that they are more likely to reach a sympathetic ear. Under current complaint handling processes clients are directed to the dealer to conduct an initial investigation, and those dealers are required to disclose other complaint options to them, be it OBSI, the MFDA, or IIROC. What are clients to do if they are not provided with those additional options?
c) In my thirty five years as a registrant I can't recall a new client ever asking me if investor protection coverage applies to them in the event of my dealer's insolvency. Having said that, if a client does want to know what coverage is available to them in such a situation, there is no obvious source of information for this, unless the potentially insolvent dealer shares it with them, but insolvencies are so rare that this is not a large problem, in our opinion. If proper disclosure of investor protection funds is the main issue to solve, perhaps OBSI or "aretheyregistered" can act as a resource for such information by tweaking their online resources to point to the appropriate SRO protection fund (CSA registrants do not appear to have such a fund through).

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

Response:

We feel that the CSA targeted outcome for issue 5 is described appropriately.

Public Confidence in the Regulatory Framework

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

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

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

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

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

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

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

Response:

On the whole we completely disagree with most of these stakeholder comments on perceived public confidence concerns. SRO boards of directors have current and former securities industry participants serving on these boards because they want industry experience that is live to varied issues that the SROs must deal with. While our preference is that former securities industry participants **not** be appointed to SRO boards (their paid positions are a conflict) it is a false premise to assume that the independent directors (usually politically connected lawyers and accountants) will understand the intricacies of day to day operations in the investment industry, and will be able to balance investor protection issues against needless regulatory burden that does not benefit the end client.

Investor advocacy groups, often dominated by lawyers who have never worked in the investment industry, have made completely ludicrous recommendations to the CSA, and two SROs, thus demonstrating a lack of understanding of the client-advisor relationship. The ongoing discussions about DSC sales abuse, perceived harm to retail investors in **every** case involving DSC sales etc. shows a real misunderstanding of our industry, and blindly ignores public interest reasons for the occasional use of DSC funds. Here are a few examples :

- A client wants to leave a firm that only offers a limited choice of proprietary funds. There is a DSC charge that the original firm wants the client to pay, and the new firm offers a commission rebate of a new low load fund or DSC fund to make the client's account whole. Is that not in the client's best interest? Unfortunately, the CSA ignored this client benefit, caved to the investor advocacy groups (and their very narrow, unresearched viewpoint) and banned all future DSC sales (except in Ontario).
- Investor advocacy groups seem to have this notion that financial advisors, and their sponsoring dealers, have almost limitless resources to make clients whole if clients change their mind, suffer job loss, or choose to move their account to a family member who only just entered the investment industry. They casually dismiss many hours of planning work delivered to such clients that has a cost, as meaningless. We are not talking about unsuitable trades here ; in these cases, I firmly believe that dealers and financial advisors will do right by these investors if the original trade was found to be unsuitable at the time. What investor advocacy groups need to acknowledge if they want to be taken seriously, is that clients often misrepresent the facts of their case in an attempt to get to their desired solution, and they can make these misrepresentations because they face no repercussions for making such misrepresentations.
- The Covid-19 freebie. Thousands of dollars in commission rebates may be paid to clients to make their accounts whole, or dozens of hours of financial, retirement, tax and estate planning services may be provided, all paid for by the responsible use of low load or DSC funds for **suitable trades**, yet the investor advocacy groups (Fair Canada, Ken Kivenko) lobbied the CSA to suspend DSC mutual fund redemption fees, and provide relief from investment or margin loans – and they said it with a straight face! These groups lack all credibility when they believe that the investment industry has billions of dollars in spare cash lying around to absorb DSC redemption fees in full, all in the name of Covid relief. Again, we are not talking about unsuitable trades here. If a client loses their job due to Covid, and needs to redeem some funds for living expenses, where is the catastrophe when clients can still access 95 to 99% of the current market value of their account? Why should the investment industry be expected to dig into their pocket to waive DSC redemption charges when they delivered valuable advice and services that investors had agreed to, knowingly, in the first place? Finally, the suggestion that financial institutions should provide relief from investment or margin loans due to Covid-19 shows an even greater ignorance of how financial institutions make loans – someone buys a GIC yielding 2% from that institution, and they in turn lend it out to credit worthy borrowers. Are these investor advocacy groups suggesting that seniors saving through GICs should waive their expectations of principal repayment in the name of Covid relief? This suggestion from Fair Canada was so laughable that it occurred to me that their board can't possibly have any retired bankers on it. Perhaps they should review **their** board composition.

a) We can't think of any obvious changes to SRO board composition that would improve public confidence in the regulatory framework. SRO board members want to do the right thing by investors, and they won't risk their reputations by doing otherwise. The CSA could look at forming an investor advocacy committee, comprised of knowledgeable, investment industry people (not biased lawyers and accountants who have no investment or investment industry experience) that could look out for investor interests, and liaise with the CSA or a consolidated SRO.
b) We can't identify instances in the current regulatory framework whereby the public interest mandate is underserved. Investor advocacy assertions that SROs go about their business completely unchecked, with no regard for public interest issues, are entirely unfounded.
c) Find reasonable, knowledgeable individuals on a committee that could raise public interest issues for retail investors, and liaise with the CSA and SROs. Nobody disagrees with the notion of investor advocacy ; we just can't identify a credible investor advocacy group, that has knowledge and experience, in existence today.
d) We do not agree with stakeholder comments on regulatory capture. Most SRO boards, certainly the MFDA, are split evenly between unpaid "industry" directors who bring knowledge and experience, and paid "public" directors who are often politically connected, retired lawyers and accountants. Occasionally, retired investment industry veterans or former regulators become "public" directors after a short cooling off period. We completely disagree with this practice and encourage the CSA and SROs to appoint truly independent directors so we can break away from the mindset of "we have always done it this way". The investment industry has evolved and it's time the board compositions did too. This proposed change would free up independent board seats that could be occupied by knowledgeable, and reasonable, investor advocates.
e) We completely disagree with stakeholder concerns regarding SRO compliance and enforcement practices, particularly the investor advocacy comments regarding a lack of dealer fines for supervision deficiencies. Both SROs regularly fine and sanction SRO dealer members for lapses in supervision. The SRO records speak for themselves and dealer sanctions have been extensive. Current SRO rules and by laws do not permit the SROs to force restitution for harmed clients, but SROs are very good at forcing their opinion on dealers when it comes to restitution (unwritten veiled threats?) and are more than willing to assist OBSI to come to the same conclusion under vague "fairness" guidelines.

   We do agree however with the stakeholder comments that one SRO (MFDA) takes a punitive approach to its enforcement proceedings, where it is not uncommon for financial advisors or dealers to spend in excess of $50,000 in legal fees to defend themselves against numerous false allegations, so they can land on one minor breach (that involved no client harm), and feel good about themselves for "winning" against the false allegations. There is absolutely no public interest being served with such a heavy handed, expensive approach by enforcement staff.

The process is deeply flawed when it causes financial ruin upon registrants who made minor mistakes with no apparent client harm, and tremendous reputational damage that may be impossible for some registrants to recover from .

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

Response:

We somewhat agree that the CSA targeted outcome for issue 6 is described appropriately, because we feel that the investor advocacy concerns, particularly regarding SRO board composition, are grossly exaggerated, and founded on a false premise that registrants do not normally deal with their clients "fairly, honestly and in good faith".

Separation of Market Surveillance from Statutory Regulators (CSA)

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

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

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

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

Response:

As stated on page 3 of this consultation paper the IDA was founded in 1916 as the Bond Dealers Section of the Toronto Board of Trade, so they obviously had the expertise to review trading activity in the Canadian debt marketplace. Then in 2002 Market Regulation Services Inc. (RS) was formed "to provide independent regulation services to Canadian marketplaces". The TSE and TSX Venture Exchange "then chose to outsource to RS, through regulation services agreements, the surveillance, trade desk compliance, investigation and enforcement functions they had historically conducted in-house". In 2008 IIROC was created "through the combination of the IDA and RS into a single organization".

From the outside looking in, we question the need for reviewing this bundling or unbundling of regulatory oversight for the third time in eighteen years. We would like to think that the concerns raised by the MFDA this year were thoroughly discussed and evaluated by the CSA on the two previous decisions. Further, Canada does not need more regulators, we need less.

If the existing CSA structure can handle the monitoring of systemic risk and inform market structure policy with existing staff resources, or would consider absorbing existing IIROC specialist staff that perform such functions, without having to create yet another regulator, then we would be supportive of that if the CSA deemed this to be in the public interest.

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

Response:

We believe that the targeted outcome for issue 7 is described appropriately.

We appreciate the opportunity to provide our comments on the Self-Regulatory Organization Framework. If you have any questions or comments on our submission please contact me directly at markkent@portfoliostrategies.ca

Yours truly,

"Mark Kent"

Mark S. Kent, CFA, CLU
President & CEO
Portfolio Strategies Corporation