UNIVERSITÉ LAVAL
Faculté de droit

**CSA Position Paper 25-404**

***New Self-Regulatory Organization Framework***

**Observations of the Groupe de recherche en droit des services financiers**

by

**Raymonde CRÊTE*, *Ad. E.***
Emeritus Professor
Emeritus Counsel
Codirector of the Groupe de recherche
en droit des services financiers
Faculty of Law
Université Laval

**Cinthia DUCLOS***
Professor and Counsel
Codirector of the Groupe de recherche
en droit des services financiers
Faculty of Law
Université Laval

October 20, 2021

**TABLE OF CONTENTS**

## Introduction

On August 3, 2021, the Canadian Securities Administrators (CSA) released its *Position Paper 25-404 – New Self-Regulatory Organization Framework* (the "*Position Paper*").[1] The *Position Paper* is part of the work launched by the CSA in 2019 to examine and assess the current regulatory framework for two Self-Regulatory Organizations (SROs), namely the Investment Industry Regulatory Organization of Canada (IIROC), which regulates investment dealers, their executives and representatives, and the Mutual Fund Dealers Association of Canada (MFDA), which regulates mutual fund dealers, their executives and representatives.

Prior to the publication of the *Position Paper*, the CSA published in June 2020 the *CSA Consultation Paper 25-402 - Consultation on the Self-Regulatory Organization Framework* (*Consultation Paper 25-402*).[2] During this consultation process, on behalf of the Groupe de recherche en droit des services financiers (GRDSF) at the Faculty of Law, Université Laval, the authors submitted a brief to provide input for the debate on some of the issues presented by the CSA and evaluate possible ways to improve the current legal framework (the "GRDSF brief").[3]

As part of the SRO framework review project, the solutions put forward in the *Position Paper* contain several positive elements that will help increase investor protection as well as regulatory efficiency and effectiveness. The approach presented is close to that of the GRDSF, which proposes the creation of an integrated, simplified, specialized and flexible framework to ensure protection for investors and maintain public trust in this key sector of our economy.[4]

---

* The authors wish to thank Benjamin Waterhouse for the translation of this text.

1 CANADIAN SECURITIES ADMINISTRATORS, *CSA Position Paper 25-404 – New Self-Regulatory Organization Framework*, August 3, 2021, [online]: https://lautorite.qc.ca/fileadmin/lautorite/consultations/bourses-chambres-oar/2021-10-04/2021aout03-25-404-enonce-position-oar-en.pdf.

2 CANADIAN SECURITIES ADMINISTRATORS, *CSA Consultation Paper 25-402 – Consultation on the Self-Regulatory Organization Framework*, June 25, 2020, [online]: https://lautorite.qc.ca/fileadmin/lautorite/consultations/valeurs-mobilieres/2020-10/2020juin25-25-402-doc-consultation-oar-en.pdf.

3 Raymonde Crête and Cinthia Duclos, *CSA Consultation 25-402 on the Self-Regulatory Organisation Framework - Brief submitted by the Groupe de recherche en droit des services financiers*, Québec, October 23, 2020 (*GRDSF Brief*), [online]: http://www.grdsf.ulaval.ca/sites/grdsf.ulaval.ca/files/grdsf-consultation_acvm_25-402version_anglaise27-10-2020.pdf.

4 *Ibid.*, p. 16-19.

In the following comments, we highlight several positive elements of the proposed reform, while suggesting areas for further exploration and possible solutions in order to improve or fine-tune some aspects before the reform is implemented.

To help readers understand the background for the review project submitted by the CSA, the first part of this brief sets out some of the features of the current SRO regulatory framework. In the second part, we make observations concerning the main elements of the reform planned by the CSA to create a New SRO, before focusing, in the third part, on the position of Québec's Autorité des marchés financiers (the "AMF") with respect to the implementation of the proposed new regulatory framework in Québec.

## I. Main features of the current regulatory framework for SROs

Over the last four decades, the investment services industry, which provides services that include investment advice, portfolio management and securities trading via investment dealers, mutual fund dealers and their representatives (intermediaries), has experienced considerable growth. In this highly complex and constantly evolving world, the regulatory authorities recognize the need to put in place a strict framework for services in order to prevent or minimize risks for investors' interests in their relations with intermediaries.

The specialized frameworks set up by the provincial and territorial securities regulators, as well as the SROs, impose entry requirements for dealers and some of their executives[5] and representatives, as well as strict legal and ethical standards of conduct to ensure the competence, integrity, loyalty, transparency, diligence and solvability of intermediaries backed up by monitoring mechanisms and disciplinary controls on the regulated persons (through inspections, investigations, disciplinary complaints, legal proceedings and sanctions). This rigorous framework, similar to the professional obligations governing the members of professional orders, allows the regulatory authorities to safeguard investors' interests and ultimately preserve public trust in the industry.[6]

---

[5] For the purpose of these observations, the term "executives" refers to members of the board of directors (directors), senior executives (chief executive officer, vice-presidents for sales, finance and operations, ultimate designated person, etc.) and other individuals holding a position that gives them key powers concerning day-to-day activities and the supervision and control of the firm and its staff (chief compliance officer, middle manager, branch manager, supervisor, etc.).

[6] Concerning recognition of the professional nature of investment services and the similarities between the legal framework governing intermediaries (dealers, certain executives and representatives) and professionals subject to the *Professional Code*, CSR, C-26, (lawyers, accountants, doctors, etc.), see Raymonde Crête, Cinthia Duclos and Marc Lacoursière, "La rationalité du particularisme juridique des rapports de confiance dans les services de placement", in R. Crête, M. Naccarato, M. Lacoursière and G. Brisson (ed.), *Courtiers et conseillers financiers* –

Currently, responsibility for this administrative and disciplinary framework lies with the CSA's member authorities with respect to registration for intermediaries offering investment services, and with the SROs for the disciplinary aspects.[7] More specifically, in the field of investment dealers, the IIROC is recognized as the SRO by the securities regulators across Canada for the supervision of investment dealers, their executives and representatives active in Québec and elsewhere in Canada. In the field of mutual fund dealers, the MFDA is recognized as the SRO by the provincial and territorial securities regulatory authorities for the supervision of mutual fund dealers, their executives and representatives, except in Newfoundland and Québec. For mutual fund dealers in Québec, supervision is provided by three organizations: the AMF, the Financial Markets Administrative Tribunal (the "MAT") and the Chambre de la sécurité financière (the "CSF"). More specifically, in this sector, the AMF and the MAT are responsible for the supervision of mutual fund dealers and some of their executives pursuing activities in Québec. In the same sector of mutual fund dealers, the CSF, recognized as an SRO by legislative accreditation, is responsible for the disciplinary supervision of the representatives of mutual fund dealers pursuing their activities in Québec.

Overall, as emphasized by the CSA in *Consultation Paper 25-402* and by several other observers, the current investment services regulation is designed in a complex, fragmented, product-based manner, rather than an integrated approach based on the services provided by the intermediaries. This regulatory fragmentation has led to a multiplication of supervisory authorities and the establishment of various registration categories and various sets of rules applicable to intermediaries offering similar services, along with a variety of investor protection plans in the event of an intermediary's insolvency or fraud. The negative consequences of this complex and fragmented approach include overlapping, redundancy and administrative and financial

*Encadrement des services de placement*, vol. 1, coll. CÉDÉ, Cowansville, Éditions Yvon Blais, 2011, p. 229 and p. 252-271.

7 This rule provides certain exceptions, in particular in Québec. Under the current framework, the AMF delegates the registration of investment dealer representatives to the IRROC. In addition, since no SRO currently supervises mutual fund dealers and their executives active in Québec, their conduct and supervision (disciplinary framework) are a responsibility of the AMF and the MAT. For the delegation to the IRROC of registration for dealing representatives, see Autorité des marchés financiers, *Délégation de fonctions et pouvoirs à l'Organisme canadien de réglementation du commerce des valeurs mobilières*, c. A-33.2, r.2.1, Décision No 2009-PDG-0100, online: https://lautorite.qc.ca/fileadmin/lautorite/professionnels/structures-marche/bourses-oar-chambres/2009pdg0100-deleg-pouvoir-ocrcvm-fr-en.pdf.

complexity, as well as risks for investors' interests. Consideration for these issues requires a review of the structure and content of the regulatory framework for SROs and for other elements covered by the SRO framework review project.

## II. Main elements of the proposed reform

In the *Position Paper*, the CSA recognizes many of these issues and proposes the creation of a new framework for SROs to increase investor protection and regulatory effectiveness and efficiency.

- **Guiding principles and general objectives of the reform**

The *Position Paper* sets out the guiding principles developed for the CSA Working Group to inform it in its search for solutions to the issues raised in *Consultation Paper 25-402*.[8] The goal was to achieve the general objectives of the reform, described by the Working Group as follows:

> Each Guiding Principle was adopted with the objective to support the development of a regulatory framework that has a clear public interest mandate and fosters capital markets that are fair and efficient. As a result, the regulatory framework will be structured to focus on investor protection to promote public confidence and to accommodate innovation and change.[9]

The guiding principles and underlying general objectives will serve as points of reference for the drafting and implementation of the new regulatory framework. To provide suitable direction for the authorities during the review process, the fundamental concepts to which the Working Group refers need to be defined, including "public interest", "investor protection" and "efficient capital markets".

In our opinion, the "public interest mandate" in the financial services sector is an overarching concept that includes the objectives of investor protection and market efficiency. In other words, the public interest mandate should constitute the cornerstone for the reform and the basis for the articulation of the objectives of investor protection and promotion of market efficiency.

- **Integration and harmonization**

In Phase 1, the CSA proposes the creation of a new single SRO ("New SRO") to supervise investment dealers and mutual fund dealers in Canada. It also plans to consolidate the current investor protection funds (the Canadian Investor Protection Fund (CIPF) and the MFDA Investor

---

8 *Position Paper*, *supra*, note 1, p. 2 and 3.

9 *Ibid.*, p. 2. See also the reference to the public interest mandate *Position Paper*, p. 2.

Protection Corporation (MFDA IPC) into a single protection fund that would be independent of the New SRO.[10] In this first phase, the restructuration process will involve harmonizing the rules, policies, compliance and enforcement process for investment dealers and mutual fund dealers providing similar services.[11] In Phase 2, the CSA contemplates the possibility of enlarging the scope of the New SRO to incorporate the oversight of other categories of intermediaries, such as portfolio managers and exempt market dealers.[12] This second phase will also provide an opportunity to continue work to harmonize regulation of both the securities and insurance sectors.[13]

Several positive elements emerge from this proposal which, overall, reflects the guiding principles we set out in the *GRDSF brief* submitted to the CSA in October 2020 during the 25-402 consultation on the SRO regulatory framework.[14]

First, the restructuring required by the creation of the New SRO will be beneficial provided it offers an **integrated framework**, in other words, a framework that is not designed in a fragmented way, but rather in a holistic and coherent approach to cover various intermediaries offering investment services, including investment dealers, mutual fund dealers, their executives and representatives. In Phase 2, the CSA will consider the inclusion of other categories of intermediaries and continue work to harmonize securities regulation with the regulation of intermediaries in the insurance sector.

Second, the beneficial effects of the review process will probably include closer coordination between the supervisory authorities (the New SRO and the securities regulators) and harmonization of SRO rules, policies, compliance and enforcement processes and fee models.

Third, the framework review will enable the New SRO to consider both individual and organizational aspects of investment services, since it will be able to supervise three groups of stakeholders—firms, their executives and representatives—by drafting and enforcing standards of conduct. From the first signs of professional shortcomings on the part of the representative of an investment dealer or mutual fund dealer, the SRO will be able to assess, at the same time, potential

---

10 *Position Paper*, *supra*, note 1, p. 5-7.
11 *Ibid*, p. 7.
12 *Ibid.*, p. 7-8.
13 *Ibid.*, p. 2, 8, 26.
14 *GRDSF Brief*, *supra* note 3, p. 16 and ff.

investor-harming behaviour, whether individual or organizational. For example, the SRO will be able to verify whether the professional failure by the representative points to an organizational or systemic failure, in particular in terms of the supervision provided by the management of the firm where the representative works. In such circumstances, the New SRO will be able to intervene with the firm and with some of its senior managers after noting deficiencies in the supervisory and compliance mechanisms it has put in place.

In short, the creation of the New SRO will have a beneficial effect on structures, regulatory content and regulatory enforcement by reducing overlaps, redundancy and administrative and financial complexity and potential risks to investors' interests arising from the existence of multiple supervisory authorities and sets of rules applying to intermediaries offering similar services, and from the variable nature of the protection mechanisms provided.

- **Governance of the New SRO**

Among the detailed solutions proposed to address the issues identified in the *Consultation Paper 25–402,* the CSA, in the *Position Paper*, suggests some positive improvements for the governance of the New SRO, including clear communication of the public interest mandate, the independence of the New SRO's board of directors, exemplary governance practices, investor advocacy mechanisms, training for directors, and CSA oversight.[15] While recognizing the timely nature of the planned improvements, we would like to share our thoughts on ways to improve some of the proposed solutions.

  - **Formal investor advocacy mechanisms**

The CSA proposes the creation, by the New SRO, of an "investor advisory panel to provide independent research or input to regulatory and/or public interest matters […]".[16]

In our view, a distinction needs to be made between an "investor panel", in other words, a committee composed of investors who are not specialists in the field of investment services, and an "expert panel", which is a committee composed of individuals with in-depth knowledge of investment services and regulation of this sector. The expectations concerning the members of each type of committee are different, and so are the objectives targeted.

---

[15] *Position Paper*, *supra*, note 1, p. 8-13.
[16] *Ibid.*, p. 11.

Given this fact, the New SRO might consider the creation of two separate advisory panels, one made up of investors, to make known their needs and concerns, and one made up of experts, including specialists in law, administration, finance and other fields, to provide input on policies, rules, guidelines and other regulatory activities intended to improve investor protection.[17]

- **Decision-making functions within the new SRO**

The board of directors and staff of the New SRO will exercise all its decision-making functions nationwide.[18] While recognizing the advantage of centralizing decision-making powers at the New SRO, one of the questions is whether the individuals asked to take on these decision-making functions will have the necessary expertise and experience to deal with the specific features of a given environment, including the legal system based on civil-law tradition and the promotion of the French language, two characteristics of Québec society.

To respond to this concern, the composition of the board of directors and the staff of the New SRO should be designed to take into account the specific legal, social and economic features of a given environment, such as the features of Québec's legal system. Similarly, reflecting the current deployment of the IIROC regional offices in Québec, Alberta and British Columbia as well as the IIROC District Councils representing all provinces and territories in Canada, the CSA should consider the possibility of maintaining or integrating regional structures with the expertise and experience needed to adapt the regulation to the differences and features of a specific environment.[19]

---

[17] See, on this topic, the proposed creation of an IIROC Expert Investor Issues Panel, [online]:https://www.iiroc.ca/news-and-publications/notices-and-guidance/request-comments-iiroc-expert-investor-issues-panel.

[18] *Position Paper*, *supra*, note 1, p. 8.

[19] IIROC's head office is in Toronto with regional offices in Montréal, Calgary and Vancouver: *CSA Consultation Paper 25-402 supra*, note 2, p. 2; IIROC District Councils, [on line]: https://www.iiroc.ca/about-iiroc/district-councils. In Québec, see : Autorité des marchés financiers, *Reconnaissance de l'Organisme canadien de réglementation du commerce des valeurs mobilières à titre d'organisme d'autoréglementation en vertu de la Loi sur l'autorité des marchés financiers, L.R.Q., c. A-33.2*, Décision N° 2008-PDG-0126, [online ] : https://lautorite.qc.ca/professionnels/structures-de-marche/organismes-dautoreglementation; Décision No 2021-PDG-0010-Organisme canadien de réglementation du commerce des valeurs mobilières, [online] : https://lautorite.qc.ca/fileadmin/lautorite/professionnels/structures-marche/bourses-oar-chambres/Decision_2021-PDG-0010.pdf.

- **Continuing education and proficiency strengthening**

The CSA recognizes the importance for the New SRO of promoting continuing education programs for investment dealers and mutual fund dealers.[20] In keeping with this focus on continuing education, it is important to emphasize skills upgrading for the representatives of mutual fund dealers so that they can offer a broader range of financial products and services taking into account the evolving needs of their clients. In addition, training programs should be planned for executives with managerial, leadership or supervisory functions within firms (investment dealers, mutual fund dealers). The training could focus on the professional nature of the services provided, the regulation and, more broadly, the legal and organizational issues of investor protection.

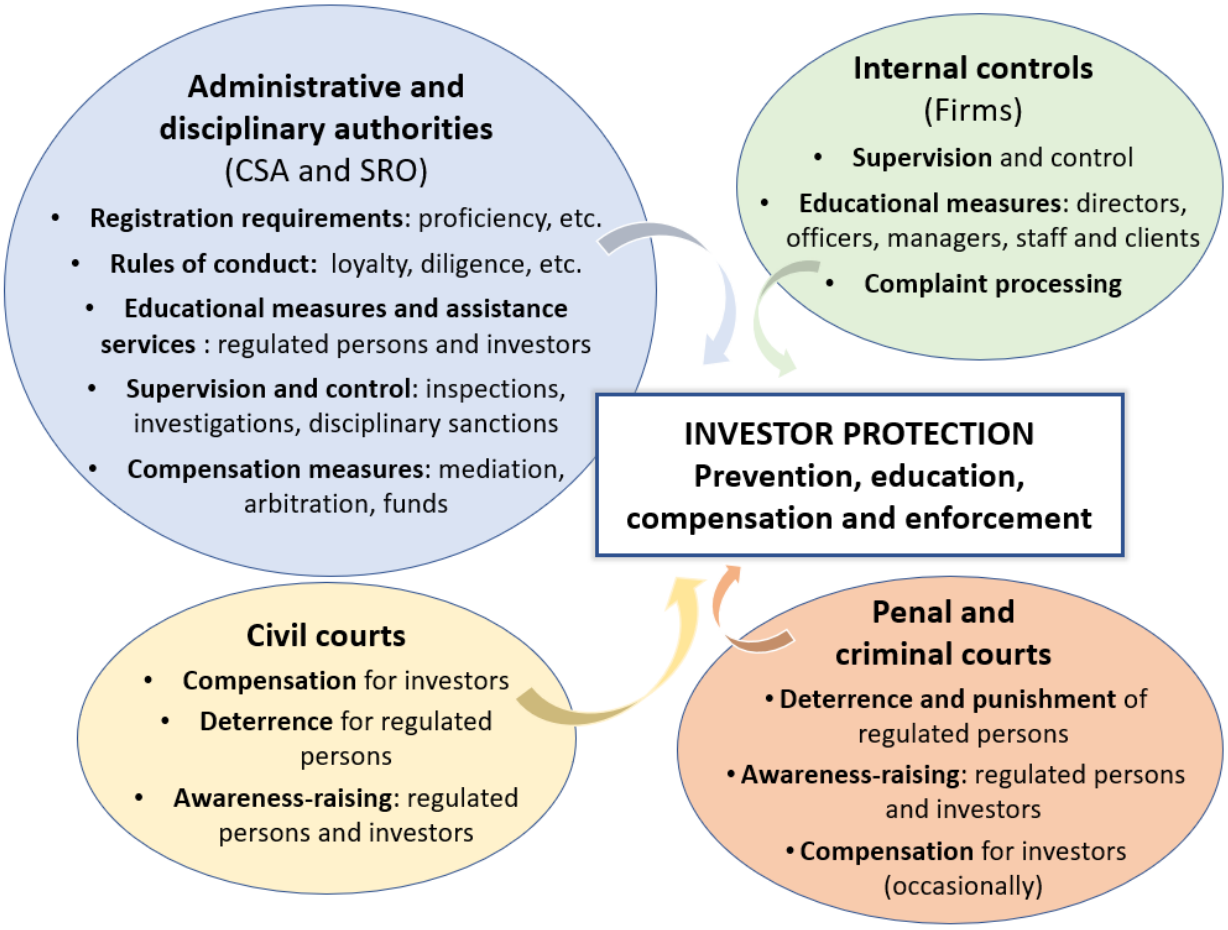
For the governance of the New SRO, the CSA also suggests enhancing training for members of the SRO board of directors to support the SRO's public interest mandate.[21] It would be appropriate to extend the offer of training programs to senior management members and mid-ranking managers exercising managerial functions at the New SRO.

- **Enhancing investor education and protection**

The CSA points out that "Investor education is a central pillar to achieving investor protection."[22] Without minimizing the need for investor education, it is clearly only one of several elements in the broad range of investor protection measures. As illustrated in Diagram 1 below (**Diagram 1: Range of investor protection measures**), investor protection must be considered holistically, taking into account all prevention, education, compensation and penalty measures for all stakeholders, including firms, executives, representatives and investors, and the authorities responsible for supervising the industry.

[20] *Position Paper*, *supra*, note 1, p. 13, 14.
[21] *Ibid.*, p. 13.
[22] *Ibid.*, p. 14.

**Range of investor protection measures**




For the consolidation of the two pan-Canadian investor protection funds, the CSA proposes, as part of Phase 2, an examination of the possibility of "harmonizing the consolidated protection fund with the *Fonds d'indemnisation des services financiers* in Québec" (FISF).[23] Since the consolidated fund and the FISF do not offer investors the same protection, in the first case focusing on insolvency and in the second case on fraud, fraudulent tactics or embezzlement, harmonization would be appropriate provided it increases the protection for Canadians investors rather than decreasing the protection for investors in Québec.

Similarly, we welcome the discussion about the inclusion in the disciplinary process of the New SRO of the payment of compensation to clients harmed by misconduct as a mitigating factor (or an aggravating factor if inadequate compensation was provided) in assessing appropriate

[23] *Ibid.*, p. 21.

sanctions.[24] The authorities could also contemplate extending the powers of the disciplinary committees and hearing panels to enable them, in some circumstances, to determine the amount paid to compensate clients who have suffered harm, and to add payment of compensation to the penalty imposed on the intermediaries at fault, reflecting the powers given to the courts in criminal trials.[25]

## III. Position of the Autorité des marchés financiers

This section focuses on the position of the AMF with respect to the implementation of the proposed new regulatory framework in Québec. For this purpose, we present an overview of the existing framework before outlining and commenting the AMF position.

### 1. Overview of the current framework for SROs in Québec

As mentioned in the first part of this document, the regulation of investment dealers, their executives and representatives is currently a responsibility of the IIROC as recognized by the securities regulators in Canada, including the AMF. In the mutual fund sector, the MFDA is recognized as an SRO by the CSA except in Newfoundland and Québec. In this sector, in Québec, the supervision of mutual fund dealers and of some of their executives is a responsibility of the AMF and the MAT, while the disciplinary supervision of the representatives of mutual fund dealers (natural persons) is undertaken by the CSF.

It is important to note that mutual fund dealers pursuing activities in Québec and elsewhere in Canada are subject to the oversight of three authorities, namely the AMF and the MAT for their activities in Québec, and the MFDA (the pan-Canadian SRO) for their activities outside Québec. This dual oversight can cause regulatory, administrative and financial problems for the supervised entities, and a risk for investor protection. The restricted power of the CSF in this sector also raises concerns, since the Québec SRO can only intervene in disciplinary matters against mutual fund representatives. This prevents it from intervening against mutual fund dealers and their executives in the event of an organizational failure or misconduct. In comparison, the current powers of the

[24] *Ibid.*, p. 15.

[25] Depending on the circumstances, a court can impose a restitution order, for example to reimburse a victim for an amount of money stolen. See sections 737.1, 738, 739 of the *Criminal Code*. See also s. 262.1 (9) of the *Securities Act*, which gives the MAT the power to issue an order requiring the person to disgorge to the AMF amounts obtained as a result of a non-compliance with an obligation imposed by securities legislation.

MFDA are broader, since it can intervene in matters pertaining to proper conduct and discipline against three groups: mutual fund dealers, their executives and representatives.

In short, for the oversight of investment services provided by intermediaries pursuing their activities in Québec and elsewhere in Canada, the assigning of powers to different organizations, the IIROC, MFDA, AMF, MAT and CSF, may be a source of confusion and administrative and financial complexity. From the standpoint of risk reduction, the AMF position on the SRO framework review project includes the positive elements that we highlight here, along with several questions.

**2. Recognition of the New SRO in Québec**

The addendum to the *Position Paper* emphasizes that the AMF will recognize the New SRO to supervise investment dealers, mutual fund dealers and their representatives in Québec.

The following excerpt from the addendum sets out the AMF position:

> Accordingly, the AMF will recognize the New SRO in the same way as the other CSA members to ensure harmonized oversight of firms registered as investment dealers and mutual fund dealers as well as natural persons registered in the categories of investment dealer representative and mutual fund dealer representative acting on their behalf.[26]

As mentioned above, recognition of the New SRO by the CSA members, including the Autorité des marchés financiers, could be beneficial if it leads to the establishment of **integrated oversight** covering all investment dealers and mutual fund dealers across Canada. Such an integrated framework would also promote the harmonization of rules, policies, compliance and enforcement processes and fee models. Last, the framework would enable the SRO to take into account both the individual and the organizational factors of service provided by intermediaries by supervising three groups simultaneously—firms, executives and representatives—when drawing up and enforcing standards and rules of conduct.

While highlighting these positive aspects, the AMF position includes questions concerning the ongoing powers of the CSF.

[26] *Position Paper*, *supra*, note 1, p. 2 of the Addendum.

### 3. Maintaining current powers of the Chambre de la sécurité financière

Currently, the CSF, as an SRO recognized through legislative accreditation, is responsible for the disciplinary supervision of various types of representatives, including the representatives of mutual fund dealers in Québec.

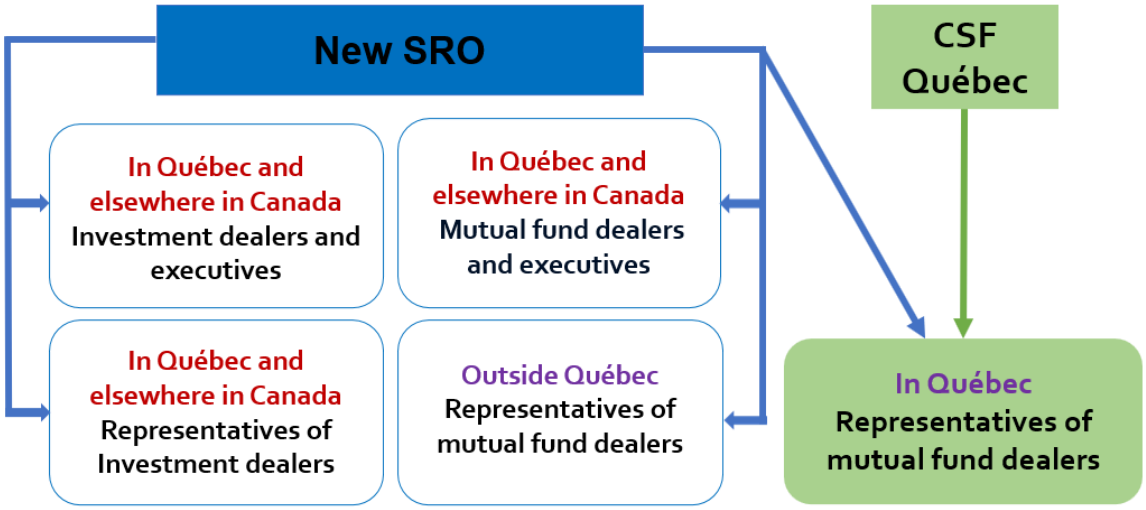
Although the AMF is considering the possibility of recognizing the New SRO for the oversight of investment dealers, mutual fund dealers and their respective representatives, it mentions that "[t]his recognition of the New SRO will not affect the mandate, functions and powers of the CSF." The AMF adds that "[t]hrough its power to approve the rules of the New SRO, the AMF will be able to ensure that those rules do not have duplicative effects where equivalent provisions apply to representatives of mutual fund dealers under Québec regulations."[27]

If the AMF recognizes the New SRO for the supervision of all investment and mutual fund dealers in Québec, including the representatives of mutual fund dealers, while maintaining the current powers of the CSF with respect to the same representatives, it seems reasonable to question the potential impacts of the new regulatory framework.

One of the questions is whether the scenario under consideration by the AMF will lead to an overlap between the functions of the two SROs. As illustrated in the diagram below (**Scenario 1**), mutual fund representatives could be subject to two different SROs, the New SRO and the CSF, which will both be able to exercise their respective disciplinary powers against the representatives, in particular through supervision (inspection procedures) and discipline (investigations, complaints process, and disciplinary sanctions).

[27] *Ibid.*

**Scenario 1 – Recognition of the New SRO by the AMF and maintaining current powers of the CSF in Québec: potential overlaps**



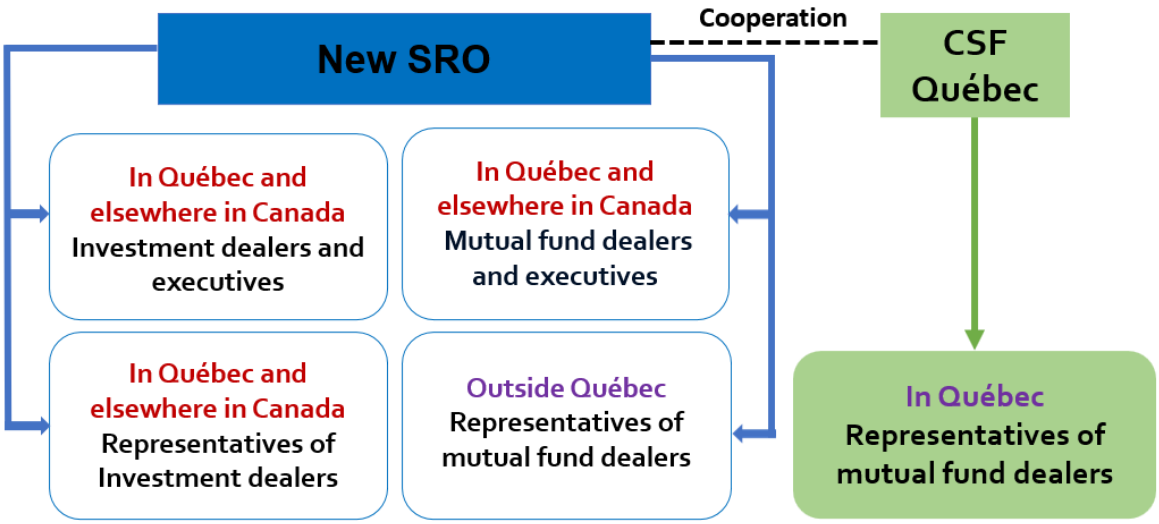

Given this situation, and although the possibility is not mentioned in the addendum, the New SRO and the CSA will probably be asked to enter into a cooperation agreement to avoid the overlaps in the supervision of representatives and their negative impacts. It is important to note that in 2004, the Agence nationale d'encadrement du secteur financier (later to become the AMF), along with the CSF and MFDA, entered into a cooperation agreement for the supervision of mutual fund dealers that were members of the MFDA and pursued activities in Québec and elsewhere in Canada.[28] The agreement includes provisions on the sharing of information, the inspection process, regulatory texts, regulatory enforcement and the process for dealing with complaints.

As illustrated in the diagram below (**Scenario 2**), if an agreement of this kind is entered into, it could recognize that in Québec, the New SRO would be responsible for the oversight of mutual fund dealers and their executives active in Québec and elsewhere in Canada, as well as for the representatives of mutual fund dealers pursuing activities outside Québec, while the CSF would remain responsible for the supervision of the representatives of mutual fund dealers pursuing

[28] *Entente de coopération conclue le 15 décembre 2004 entre l'Agence nationale d'encadrement du secteur financier (« Autorité »), Chambre de la sécurité financière (« Chambre ») et Association canadienne des courtiers de fonds mutuels (« ACCFM »)*, [online]: https://lautorite.qc.ca/fileadmin/lautorite/reglementation/distribution/ententes/2004dec15-entente-csf-amf-accfm.pdf.

activities in Québec. It is appropriate here to review some of the advantages and disadvantages that could arise from this sharing of powers between the two SROs.

**Scenario 2- Recognition of the New SRO and maintaining current powers of the CSF in Québec based on a cooperation agreement between the SROs**




Among the advantages to be highlighted is the fact that maintaining the powers of the CSF over the representatives of mutual fund dealers would be beneficial because of the expertise and experience that this SRO has developed over the years in the mutual fund sector in Québec. In addition, the CSF, because of its proximity to the sector it oversees, has in-depth knowledge that enables it to intervene while taking into account the specific features of the Québec legal system in which the representatives operate. The functions of the CSF also match its multidisciplinary powers, which allow it to supervise representatives registered in various categories based on their areas of expertise, such as mutual funds, insurance and financial planning.

However, the possible sharing of powers between the New SRO and the CSF under a cooperation agreement also has, in our view, some weaknesses. One results from the restriction on the powers of the CSF, which would probably be maintained. The powers of the CSF under the current legislation mean that it can only intervene in the mutual fund sector with respect to representatives.[29] Because of this restriction to the individual aspects of service delivery, the CSF

[29] See the *Act respecting the distribution of financial products and services*, CQLR, c. D-9.2.

cannot intervene with respect to executives and firms in the event of an organization or systemic failure. For example, if the shortcomings of a representative also point to deficiencies in compliance mechanisms within a firm, the CSF cannot impose sanctions either on the firm or on any executives who failed in their supervisory duties with respect to the representative.

If a cooperation agreement between the two SROs is finalized, it will probably recognize the power of the New SRO to assess organizational aspects by conducting inspections and investigations and imposing sanctions on dealers and some of their executives, while the CSF will be able to act only against representatives. In this scenario, an automatic inspection or investigation mechanism should be established within each SRO, triggered when the CSF investigates or sanctions a representative.[30] For example, if the CSF imposes a disciplinary sanction on a mutual fund representative following a professional breach, the New SRO should, at the same time, launch an investigation of the mutual fund firm where the representative works. The sharing of information and synchronization of supervision and control activities between the two SROs would allow them to identify issues of a systemic nature that could have a negative impact on the behaviour of other representatives working for the same firm.

In short, if a cooperation agreement is entered into by the CSF and the New SRO to oversee the mutual fund sector in Québec, both SROs will be able to intervene within the same firm. Although this scenario has some positive elements, it could increase the administrative and financial complexity and investor confusion.

In comparison, a different situation would apply for the supervision of investment dealers pursuing activities in Québec and elsewhere in Canada. The creation of the New SRO would enable it to intervene with three groups (investment dealers, executives and representatives). The creation of this integrated oversight would allow the SRO to assess, within a single firm, the individual and organizational behaviour with potential to harm investors.[31] In addition, the integrated oversight

[30] The mechanism established needs to be stricter and more systematic, going beyond the forwarding of information about complaints received against a representative or firm and the possibility of requesting an investigation in "special circumstances", as currently provided for in the cooperation agreement. See *Entente de coopération, supra*, note 28, p. 6-8.

[31] For more details, see Cinthia Duclos, *La protection des épargnants dans l'industrie des services d'investissement: une analyse de l'influence des défaillances organisationnelles sous l'angle du Swiss Cheese Model*, coll. CÉDÉ, Éditions Yvon Blais, Montréal, 2021, p. 419 and ff.

provided by a single SRO would help reduce administrative and financial complexity and investor confusion.

Because of these advantages, the AMF could contemplate a similar solution by recognizing the New SRO as the sole authority for the supervision of mutual fund dealers and their executives and representatives active in Québec. Recognizing this sole responsibility of the New SRO would, however, require a legislative amendment to withdraw the CSF's power to discipline the representatives of mutual fund dealers active in Québec. This possibility, along with the other options we have discussed in previous documents, has both advantages and disadvantages that should be taken into consideration by the authorities responsible for implementing the reform.[32]

**Conclusion**

As pointed out by several observers, the current framework for the supervision of investment services has a complex and fragmented design based on products rather than on the activities pursued by intermediaries. This fragmentation has led to a multiplication of supervisory authorities that have established various registration categories and various sets of rules applicable to intermediaries offering similar services, along with a variety of investor protection plans in the event of an intermediary's insolvency or fraud. The negative consequences of this fragmented approach include overlapping, redundancy and administrative and financial complexity, as well as risks for investors' interests.

In the *Position Paper*, the CSA proposes the creation of a New SRO to supervise investment dealers, mutual fund dealers, their executives and representatives and, in a second phase, other categories of intermediaries. In our view, the creation of the New SRO will be beneficial provided it offers an integrated framework, in other words, a framework that offers a holistic and coherent approach to cover various intermediaries offering investment services. Integrated supervision will

[32] Raymonde Crête and Cinthia Duclos, *Réflexions sur l'encadrement des services de courtage en épargne collective*, brief submitted during the consultation on the *Rapport sur l'application de la Loi sur la distribution des produits et services financiers*, Québec, September 30, 2015, p. 28-35, [online]: http://www.finances.gouv.qc.ca/documents/ministere/fr/MINFR_LDPSF_Raymonde_Crete-Cinthia_Duclos.pdf; Raymonde Crête and Cinthia Duclos, *Projet de no 141 - Loi visant principalement à améliorer l'encadrement du secteur financier, la protection des dépôts d'argent et le régime de fonctionnement des institutions financières*, Mémoire du Groupe de recherche en droit des services financiers soumis à la Commission des finances publiques, January 18, 2018, p. 34, 35, [online]: http://www.grdsf.ulaval.ca/sites/grdsf.ulaval.ca/files/grdsf-memoire-projet_de_loi_14118-01-2018.pdf. See also C. Duclos, *supra*, note 31, p. 419 and ff.

support a harmonization of rules, policies and regulatory compliance and enforcement processes. The proposed reform will enable the New SRO to consider both individual and organizational aspects in the services provided by intermediaries, since it will be able to supervise three groups of players—firms, their executives and their representatives—by drafting and enforcing standards of conduct.

The position of the AMF, as set out in the addendum, also offers some positive elements since, in keeping with the idea of integrated oversight, it considers the possibility of recognizing the New SRO in Québec for all investment and mutual fund dealers. At the same time, the AMF proposes that the CSF should retain its powers for the disciplinary supervision of the representatives of mutual fund dealers in Québec. Maintaining the powers of the CSF would be beneficial because of the expertise and experience that it has developed over the years in the mutual fund sector in Québec, and because of its multidisciplinary powers, which allow it to supervise representatives holding various kinds of registration based on their areas of expertise. However, maintaining the powers of the CSF will probably lead to overlapping between the CSF and the New SRO in the supervision of mutual fund representatives, which could generate administrative and financial complexity and increase investor confusion. To deal with these issues, we call on the authorities responsible for implementing the reform to analyze and assess various alternative solutions, taking into account the fundamental objective of advancing the public interest mandate that underlies the whole question of SRO oversight.

Overall, we consider that the reform undertaken to improve the regulatory framework for SROs has several positive elements that will help strengthen investor protection and increase regulatory efficiency and effectiveness.