



| Faculté de droit

Groupe de recherche en droit des services financiers

June 27, 2022

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

Dear Madam,

Dear Sir,

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

Introduction

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

In this letter, we set out our comments and observations on the latter notices, based on the briefs we previously submitted during the consultations and on research work completed by the GRDSF since 2007.¹

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

An integrated, simplified, specialized and flexible framework

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

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

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

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

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

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

² See the monograph on this topic: Cinthia DUCLOS, *La protection des épargnants dans l'industrie des services d'investissement : une analyse de l'influence des défaillances organisationnelles sous l'angle du Swiss Cheese Model*, Coll. Cédé, Éditions Yvon Blais, Montréal, 2021.

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

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

In short, we consider that the proposed reform will promote the creation of an integrated, simplified, specialized and flexible framework to ensure protection for investors and maintain public trust in this key sector of our economy.

The public interest mandate of the New SRO

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

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

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

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

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

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

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

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

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

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

Maintaining decision-making powers in Québec

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

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

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

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

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

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

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

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

⁷ *Ibid.*, s. 21(c).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Creation of an investor advisory panel

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

However, in light of the panel’s mandate, functions and membership, as presented in the terms of reference, we consider that it is more like an expert panel in the field of investment dealing and mutual fund dealing, with a focus on investor protection, than an investor advisory panel. In our view, a distinction needs to be made between an “investor panel”, in other words, a committee composed of investors who are not specialists in the field of investment services, and an “expert panel”, which is a committee composed of individuals with in-depth knowledge of investment services and regulation of this sector. We suggest that the CSA should reflect on the panel’s title and consider the possibility of renaming it to match its mission and the expectations as to its work.

¹² Raymonde Crête and Cinthia Duclos, *Réflexions sur l’encadrement des services de courtage en épargne collective*, brief submitted for the consultation on the *Rapport sur l’application de la Loi sur la distribution des produits et services financiers*, Québec, September 30, 2015, p. 28-35, [online]: http://www.finances.gouv.qc.ca/documents/ministere/fr/MINFR_LDPSF_Raymonde_Crete-Cinthia_Duclos.pdf (retrieved June 14, 2022); Raymonde Crête and Cinthia Duclos, *Projet de loi 141 - Loi visant principalement à améliorer l’encadrement du secteur financier, la protection des dépôts d’argent et le régime de fonctionnement des institutions financières*, brief by the Groupe de recherche en droit des services financiers submitted to the Commission des finances publiques, January 18, 2018, p. 34, 35, [online]: http://www.grdsf.ulaval.ca/sites/grdsf.ulaval.ca/files/grdsf-memoire-projet_de_loi_14118-01-2018.pdf (retrieved June 14, 2022). See also C. Duclos, supra, note 2, p. 419 and following.

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

¹⁴ *Ibid.*

¹⁵ *Ibid.*

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

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

Status quo for protection funds in Québec

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

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

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

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

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

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

Conclusion

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

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

Sincerely,

The Groupe de recherche en droit des services financiers, by

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

Appendix A - Main GRDSF publications

Monographs and collective works

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

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

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

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

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

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