Date: March 25, 2024

Delivered By Email: memberpolicymailbox@ciro.ca

Member Regulation Policy
Canadian Investment Regulatory Organization
Suite 2000
121 King Street West
Toronto, Ontario M5H 3T9

Dear Sirs and Mesdames:

RE: CIRO Consultation - Policy Options for Leveling the Advisor Compensation Playing Field

The Investment Funds Institute of Canada (**IFIC**) appreciates the opportunity to comment on Canadian Investment Regulatory Organization (**CIRO**) Position Paper - *Policy options for leveling the advisor compensation playing field* (**Consultation**).

IFIC is the voice of Canada's investment funds industry. IFIC brings together approximately 150 organizations, including fund managers, distributors and industry service organizations to foster a strong, stable investment sector where investors can realize their financial goals. IFIC operates on a governance framework that gathers member input through working committees. The recommendations of the working committees are submitted to the IFIC Board or board-level committees for direction and approval. This process results in a submission that reflects the input and direction of a broad range of IFIC members.

We would like to point out, as we have in our comments on Phase 1 and Phase 2 of the CIRO Rule Consolidation Project, that longer consultation periods of at least 90 days are more appropriate for CIRO consultations. The Consultation is complex and given the various business models that operate in the industry, a longer consultation period would have allowed us to do an even more in-depth analysis of the various elements. Given that the Consultation is a concept paper, our comments are also conceptual, pending further details. There are many unanswered questions for each of the options provided in the Consultation and we base our recommendation on the information we have today.

Summary of our comments

Our comments and recommendations are summarized in the following points:

1. We believe that the Consultation's objective for the corporation[1] to be able to engage in registerable and non-registerable activity may not require legislative amendments, and may be implemented through amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103)**. This approach could also allow substantial implementation in one step, rather than a phased implementation, which is lengthy and costly.
2. We emphasize that allowing the activities of the corporation to include both non-registerable and registerable activities is essential to the success of any approach.
3. To ensure a level playing field for the various business models, consideration needs to be given to the employment, tax and operational implications for dealers with long-standing employer/employee arrangements. While we note that the Consultation does not distinguish between an employer/employee arrangement and a principal/agent arrangement with the sponsoring dealer, we

[1] "corporation" refers to a personal corporation that is approved by CIRO to engage in activities on behalf of the sponsoring dealer

recommend that CIRO state specifically, in its rules, that the approach is available to both arrangements.

4. We recommend permitting the corporation to be owned by Approved Persons and other regulated individuals in other financial sectors, such as life and health insurance (**Personal Insurance**) and financial planning, and/or owned by their respective immediate family members or family trusts.

Comments and recommendations

IFIC thanks CIRO for addressing this long-standing issue and for providing stakeholders the opportunity to comment. In the new era of a single self-regulatory organization and firms with dual registration, a harmonized Approved Persons compensation model is an essential element to fulfill the intended benefits from the creation of CIRO.

We do not support the Enhanced Directed Commission approach (**Option 1**), since it does not lead to the corporation being able to engage in registerable activities.

Our recommended approach does not fully fall under the other two options presented in the Consultation. Rather than choosing between the Incorporated Approved Person approach (**Option 2**) and the Registered Corporation approach (**Option 3**), we present the desired outcome and the mechanism to achieve it. Our objective is to level the playing field for all Approved Persons (mutual fund and investment dealer representatives), and address investor protection objectives, while minimizing the burden of regulatory development and implementation for CIRO, the Canadian Securities Administrators (**CSA**) and the industry.

We present our recommended approach below.

Achieving the desired outcome through regulatory change in one step

We believe that the objective for the corporation to be able to engage in registerable and non-registerable activity may not require legislative amendments but may be implemented through amendments to NI 31-103 where permissible under local law[2]. Similar to the approach taken for international advisers and international dealers in Part 8 of NI 31-103, the requirements for the corporation can be specified. We also note that the previous Mutual Funds Dealers Association of Canada (**MFDA**) Rule 2.1.4 was enabled through the CSA rule-making process and registration exemptions (without legislative changes) – and we believe this process could be repeated to enable adoption of a proposal relatively quickly[3].

The advantage of this approach is that it avoids relying on legislative changes in each jurisdiction (that are currently assumed necessary in both Option 2 and Option 3). Legislative changes are not guaranteed to be achieved. Even if carried out by each jurisdiction, legislative changes would be long and potentially implemented at different times in each jurisdiction, therefore disharmonizing the system within Canada and, for some potentially significant period of time, countering the level playing field that CIRO and the CSA are trying to achieve.

Another advantage of our proposed approach is that the objective is met in one step rather than the phased implementation contemplated under Option 2. Allowing non-registerable activity in an interim phase and

[2] For example, this is how the Securities Act of Ontario would permit to introduce a new registration category through regulation: Section 26.(2)1(vi) "A person or company making an application under subsection (1) with respect to registration as a dealer under this Act shall do the following: 1. Apply to be registered in one or more of the following categories:…(vi) such other category of dealers as may be prescribed by regulation. Section 143(1): "Subject to subsection (1.1) the Commission may make rules in respect of the following matters: 2. Prescribing categories or subcategories of registration. In certain other jurisdictions, exemptive relief from registration requirements may be necessary, but this relief could be issued conditional upon the corporation complying with the new registration category requirements prescribed in NI31-103.

[3] See for example BC Instrument 32-503: Registration exemption for approved persons of the Mutual Funds Dealers Association of Canada

then shifting to a model that also allows registerable activity means two significant successive operational changes.

To ensure that CIRO can achieve its oversight objectives, we recommend that the corporations which include ownership by CIRO Approved Persons, be overseen by CIRO.

Allowing the activities of the corporation to include registerable activities

We emphasize that allowing the activities of the corporation to include both non-registerable and registerable activities is essential to the success of any approach. If a CIRO proposal proceeds strictly on the basis of non-registerable activities, it would create a strong likelihood of advisor confusion, with advisors having to distinguish between non-registerable and registerable activities. This would, in turn, require dealers to classify every element of their operations, retaining associated records, increasing compliance risk and complicating their financial affairs. It would also ultimately put the dealers themselves in the position of allocating an advisor's payment stream between registerable and non-registerable activities – leaving every dealer liable to tax authorities for an incorrect allocation. It is, in short, a recipe for widespread industry disruption and uncertainty. Proceeding with a model that permits both registerable and non-registerable activity within the corporation would provide clarity and simplicity, while obviating compliance risk.

Taking into account various compensation models

As raised in the Consultation, there are currently different compensation models in the industry between mutual fund and investment dealers and their Approved Persons. This problem is particularly acute for firms with dual registration. To ensure a level playing field for these various models, consideration needs to be given to the employment, tax and operational implications for dealers with a long-standing employer/employee arrangement. While we note that the Consultation does not distinguish between an employer/employee arrangement and a principal/agent arrangement with the sponsoring dealer, we recommend that CIRO state specifically, in its rules, that the approach is available to both arrangements. These complexities are not limited to the sponsoring dealer and Approved Person but could also impact support staff.

If the approach is not clearly available under both arrangements, an unintended consequence of the proposal would likely be a broad shift to the principal-agent model, posing significant disruption to the distribution model used in much of the industry, and operational changes in the way advisors interact with their head offices.

In any event, whichever conceptual proposal moves forward, the industry would need to conduct a more detailed analysis of all relevant factors and plan for a complex operational shift to ensure all advisors are on equal footing, and therefore request adequate lead time before the rules contemplated in a proposal become effective.

Expanding ownership of corporations

Currently, some mutual fund Approved Persons direct some commissions from mutual fund activities to corporations that have other owners who operate in other financial services, such as Personal Insurance or financial planning. This model would be consistent with regulatory objectives and beneficial for the Approved Persons because it facilitates their operations and reduces undue regulatory burden.

We recommend permitting the corporation to be owned by Approved Persons and other regulated individuals in other financial sectors, such as Personal Insurance and financial planning, and/or owned by their respective immediate family members or family trusts.

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CONCLUSION

IFIC is pleased to have had this opportunity to provide our comments on the Consultation. Please feel free to contact me by email at amitchell@ific.ca. I would be pleased to provide further information or answer any questions you may have.

Yours sincerely,

THE INVESTMENT FUNDS INSTITUTE OF CANADA

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