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The Honourable Marie-Claude Blais, Q.C.
Minister of Justice and Attorney General
Department of Justice and Attorney General
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Dear Minister:

Re: Single Independent Financial Services Regulatory Agency

The Investment Industry Association of Canada (IIAC) appreciates the opportunity to provide comments on the value to New Brunswick of creating a single independent Financial Services Regulatory Agency (FSRA). IIAC represents 175 members – 85% by number and 95% by revenue – of active investment dealers regulated by the Investment Industry Regulatory Organization of Canada (IIROC). IIROC-regulated firms and their IIROC-registered investment advisors play an essential role in Canada's securities industry across the country. New Brunswick advisors build prosperity and investment security for investors and their families in the province by helping to pool savings into productive capital investment in companies that create jobs and economic growth nationwide from east to west.

Benefits

We believe that combining different financial industry regulators into one agency has a number of positives. Beyond those you mentioned – greater consistency, reduced duplication and additional efficiencies – benefits include:

- Better co-ordination in terms of financial fraud investigations
- Better financial consumer experience: New Brunswickers will benefit from what will be a one-stop source of information
- Job enrichment through cross-training and better professional opportunities through a broader career path for public sector employees currently working in sector-specific regulators.

Our recommendations on the following points have a securities regulatory focus, given our members' businesses, however, we believe they apply to financial services and market regulation generally.

Structure

We agree that the agency should be structured as an independent organization, that is, at arm's-length from the Ministry, so that the FSRA can have clearly defined mandates and responsibilities.

- We believe that the best *mandate* for FSRA would be twofold and likely consistent with current individual ones, that is, to protect consumers from unfair, improper or fraudulent practices with respect to financial products and services, and to foster an environment of fair, transparent, efficient and competitive savings and investment markets.
- The FSRA's *responsibilities* would include efficient regulation (including through the opportunity to delegate regulation to appropriate other parties) of those providing financial products and services, and those allowed to transact in the various marketplaces for these instruments.

Specifically with respect to securities, we believe the FSRA should be structured at inception to house those who will represent New Brunswick's interests within the National Securities Regulator (NSR). New Brunswick is to be commended for displaying a strong interest in the opportunities presented by participating in the advisory committee for the formation of an NSR to benefit New Brunswick residents and businesses. To this day, despite the efforts of New Brunswick's participation in the Canadian Securities Administrators, New Brunswick residents have been left unable to buy into a good number of securities issuances given that fees must be paid for every jurisdiction into which securities are sold, and, similarly, issuances of New Brunswick businesses may not be distributed as widely outside the province as they could be in an NSR model. Including a division within the FSRA for securities regulation would avoid the disruption of incorporating the New Brunswick Securities Commission into the FSRA and then disengaging part when an NSR is implemented.

Funding

We agree that the agency should be self-funded in a way that both (1) reflects the mandate and responsibilities of the FSRA and (2) allocates costs fairly to those registered in the different sectors regulated according to the work related to those sectors.

This means that activities such as building out venture and angel financing networks, and investigating other capital-raising options, should fall under New Brunswick's Department of Economic Development. It should be funded by New Brunswick taxpayers that will benefit from the resulting economic growth, and not just by New Brunswickers investing for retirement or other purposes and New Brunswick companies that seek capital funding.

Effective Regulation

Regulation – in the right measure – is an important support to strengthening the efficiency, soundness and fairness of our financial markets and investor protection. The financial industry has committed substantial resources to implementing rules from federal and provincial governments and agencies, and on ongoing compliance and oversight. We believe that a better job can be done at the concept stage of regulation development and by reviewing progress against specific goals. At a time that most governments have committed to red tape reduction, we recommend that the government formally establish a transparent framework for financial regulatory policy-making.

We believe regulators and other stakeholders should work collaboratively on the following simple review process at the start of and after, rather than (as happens usually) towards the end of, policy-making. We think that New Brunswick can apply these principles and approach to become a recognized leader in efficient regulation in all areas of the financial sector over which the province has jurisdiction, including by delegation.

- 1) Regulators should publish priorities and target timetables to introduce policy proposals with a frame of reference and adequate time for consultations to ensure that all stakeholders can provide thoughtful responses.
- 2) Consultation among regulators and stakeholders should take place to agree on a plain-language two-page summary of a perceived problem (issue statement) and whether it requires regulatory intervention i.e., can improve on market solutions, including moral suasion. Problem definition is critical to ensuring that regulators and stakeholders are able to effectively expend resources.
- 3) If regulatory intervention is required, there should be agreement among the government and industry representatives that must implement them on the most reasonable two or three possible solutions. For example, transparency can be very effective without causing some of the costs of other regulatory options.
- 4) The most promising solutions should be subject to a conceptual cost-benefit analysis by regulators with those to be regulated. Consistent with a provision in the Quebec Derivatives Act, the FSRA should consider the costs to those it regulates and other stakeholders, as well as unintended consequences that may result from rules. Except in the cases where there is a high and imminent risk, this should be done before draft rules are made public to avoid the challenges encountered when a draft regulation must be pulled back for rework.
- 5) If after consultation, the proposal is revised substantially, there should be a second round of consultations with appropriate time for response. A second round should rarely be necessary if steps 1. to 4. above are completed effectively.
- 6) Regulators must ensure that regulated firms have sufficient time to make systems and procedural changes to implement regulations in a pragmatic way by co-ordinating the timing of regulation with other regulatory bodies that govern the same stakeholders and be

aware of other sources of new regulation to ensure stakeholders are not faced with a barrage of competing and possibly conflicting rules.

- 7) At a set time following implementation of a new regulation, regulators should consult with stakeholders on the success of the regulation against specific quantifiable goals established before the fact for the rule such as improvement in the perception of financial consumer protection, more efficient markets or greater regulatory cost-effectiveness for regulated entities. The analysis should include an assessment of whether there are any negative or unintended consequences and the results should be made public and be provided to the Minister to help with continuous improvement of outcomes for New Brunswickers and New Brunswick businesses.
- 8) To ensure overall efficiency for financial consumers, regulated entities and taxpayers, there should be a rotating review over a number of years of all rules.

We would be pleased to provide further information on this subject to you at your convenience.

Yours sincerely,

A handwritten signature in black ink, appearing to read "J. Man". The signature is written in a cursive style with a long, sweeping underline.