IIAC ACCVM
Investment Industry Association of Canada Association Canadienne Du Commerce Des Valeurs Mobilières

June 24, 2022

Submitted via Email

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

Attention:

The Secretary
Ontario Securities Commission
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Toronto, Ontario M5H 3S8
comments@osc.gov.on.ca

Me Philippe Lebel, Corporate Secretary
and Executive Director, Legal Affairs
Autorité des marchés financiers
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Re: CSA Staff Notice and Request for Comment 25-304 *Application for Recognition of New Self-Regulatory Organization* (the "New SRO Consultation") and CSA Staff Notice and Request for Comment 25-305 *Application for Approval of the New Investor Protection Fund* (the "New Investor Protection Fund")

Dear Sirs and Mesdames:

The Investment Industry Association of Canada (the "IIAC") is the leading national association representing investment firms that provide both products and services to Canadian retail and institutional investors.

Our members manufacture and distribute a variety of securities including mutual funds and other investment funds. They provide a diverse array of portfolio management, advisory and non-advisory services.

Our members provide carrying broker services and include introducing brokers.

The IIAC is committed to the service of the investing public. As a representative of the dealers providing the majority of the wealth distribution, trading and underwriting services in Canada, the IIAC is able to provide a knowledgeable and considered contribution to the development of a single, enhanced pan-Canadian self-regulatory organization ("SRO").

We greatly value the opportunity to comment on the proposed frameworks in CSA Staff Notices and Requests for Comments 25-304 and 25-305. We also appreciate and respect the importance of continuing to positively contribute to the development of the new SRO beyond this very brief comment period which does not permit a comprehensive analysis of all considerations surrounding a successful new SRO.

EXECUTIVE SUMMARY

The IIAC continues to support the development of a single, enhanced new SRO and the CSA's efforts to date in this regard.

Some key recommendations include the following:

Operational Considerations

i) All activity approved by the Mutual Fund Dealers Association (the "MFDA") at the time interim rules come into effect should be deemed approved by the New SRO without requiring further proficiency upgrades for those who work at dealers choosing to integrate platforms.

ii) A mutual fund only dealer or distribution channel addresses the needs of many Canadian investors. It should not be subject to disruption including avoidable cost.

iii) For dealers who choose to integrate platforms while continuing the same or substantially similar activities, an application or exemptive relief process should not be required.

iv) Prompt harmonization within and for the province of Québec through a consolidation of functions currently conducted by Chambre de la Sécurité Financière ("la Chambre") and the AMF to the New SRO and a consolidation of investor protection fund coverage

New SRO Governance

i) In order to effectively set industry standards and regulations, the New SRO must remain informed by industry, who has a keen, front line and deep understanding of the investor needs it services.

ii) Every effort should be made to ensure that industry board members are a realistic reflection of the market:

- The Articles and Draft By-Laws may have further flexibility and refer to a minimum and maximum number of directors, rather than being fixed at 15.

- A skills matrix for proposed Directors should include Member input.

- A final skills matrix should be available to the Governance Committee and to the public and be updated regularly to reflect evolving market and investor needs.

- Governance Committee members should include Industry Directors.

- The meaning of independence should be expanded beyond individuals who have no material relationship to the Corporation or Member and include a requirement for individuals to have independence from securities regulators and securities related advocacy associations.

Industry Advisory Councils/Committees

i) With respect to powers previously exercised by District/Regional Councils, the particulars regarding how Members may seek and obtain approval from the Corporation or Senior Staff and appropriate escalation and appeal procedures remain to be determined and need be subject to fulsome member consultation.

ii) A clear advisory mandate for Regional Councils need be formulated through further member consultation. The proposed National Council should also have formal standing before the Board.

iii) Advisory Committee(s) reflective of executive leadership at various dealer models should be formed as a valuable resource for the New SRO Board.

Public Interest Mandate

i) The New SRO mandate should be expanded to include capital growth, minimizing regulatory inefficiencies and proportionate regulation. The New SRO should be required to conduct and produce a meaningful needs analysis and cost benefit analysis for its proposed or amended rules, policies and guidance.

CSA Oversight

i) The CSA previously rejected a CSA-led regulatory organization. The proposed overarching and prescriptive non-objection framework functionally removes all decision-making autonomy from the New SRO. The New SRO requires sufficient discretion, authority, and deference to enact its mandate.

Transition Considerations

i) Reasonable timelines for both implementation and member consultation should be a priority. With respect to the latter, ongoing, meaningful but efficient member dialogue is necessary to move from interim to final rules within a defined time period.

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I. OPERATIONAL CONSIDERATIONS

a) Proficiency Requirements: MFDA approved registered representatives

Recommendation: MFDA qualifications and oversight fully and properly addressed investor protection concerns. No additional proficiency requirements need be imposed on individuals who are currently Approved Persons by the MFDA, including for those who work for dealers who choose to combine operations or platforms, without changing their permitted activity.

The interim rules have added or maintained unneeded barriers for those dealers' considering integration of their mutual fund and investment dealer platforms. Registered Representatives dealing exclusively with mutual funds at a firm registered as both an Investment Dealer and a Mutual Fund Dealer would now need to complete the CSC/CIF/IFIC course and the CPH course and be subject to a 90-day training program in advance of approval. The Registered Representative will then be subject to 6 months of supervision post-approval (Investment Dealer Rule 2602(3) (vii)) (the "Proficiency Upgrade").

For those firms who wish to simply migrate their MFDA qualified advisors to an IIROC platform, there has been no change in the proficiency requirements for Registered Representatives or Investment Representatives approved to deal exclusively with mutual funds at an investment dealer (Investment Dealer Rule 2553(4)). These proficiency requirements include the completion of the Canadian Securities Course ("CSI") and the Conduct and Practices Handbook Course ("CPH") within 270-days of initial approval (the "270-day Rule"). There has been acknowledgment in the *CSA Position Paper 25-404 - New Self-Regulatory Organization Framework* ("2021 CSA Position Paper 25-404*")* that the 270-day Rule was likely no longer fulfilling its policy objective.

Proficiency requirements should be based solely on the proven competency for the activity conducted by the individual. The corporate structure or platform of a dealer should not play any role. The interim rules place the focus on the corporate structure of the dealer's platform, rather than proven competencies. They also have the unintended consequence of creating two classes of registrants licensed to sell mutual funds: those who are registered through a standalone MFDA platform and those who have had to upgrade their mutual fund proficiency merely because they are part of a combined dealer platform – ie. because of the corporate structure of their dealer.

The Proficiency Upgrade and the 270-day Rule imply the MFDA's current proficiency requirements for individuals selling mutual funds is deficient. It also does not recognize the CE requirements that have been incorporated to enhance proficiency of MFDA registrants and the ongoing MFDA oversight to which they have been subject.

An established and trusted approved person dealing in mutual funds only may also need to step away from servicing clients in order to address the Proficiency Upgrade or 270-day Rule requirements to the detriment of the investor. It also raises considerations of cost and many administrative challenges. With respect to the latter, dealers may need to re-register individuals under the proposed new category of "Investment Representative dealing in mutual funds only who is an employee of a firm registered both an investment dealer and mutual fund dealer" on the National Registration Database, to perform the same activities they have been approved to undertake by the MFDA. This is an unnecessary administrative burden.

Finally, the Proficiency Upgrade is inconsistent with proposed Investment Dealer Rule 2603, Permitted Activities of mutual funds only Registered Representatives and Investment Representatives, which permits individuals approved by the MFDA to trade in exchange-traded funds and exempt market products within 90 days of this Rule coming into effect without a proficiency upgrade.

We recommend that all activity approved by the MFDA at the time interim rules are effective remain approved by the New SRO without further question of a proficiency upgrade.

b) Combining Platforms

Recommendation: It is unnecessary for dealers to undertake an extensive application and exemptive relief process to combine operations/platforms within their currently registered dealers where there is no significant change in activity.

The proposed category of dual-registered firm is counter to the objectives of creating a single, national SRO. Dealer integration should be as seamless and cost effective as possible.

A mutual fund only dealer or distribution channel has shown that it has addressed and continues to address the needs of many Canadian investors. It should not be subject to disruption including avoidable cost.

For dealers who wish to integrate platforms, the IIAC appreciates the need for the New SRO to receive plans from dealers outlining how they intend to achieve the integration. As dealers have been properly registered through either Investment Industry Regulatory Organization of Canada ("IIROC"), MFDA or both, an application process is unnecessary. For dealers who choose to integrate platforms while continuing the same or substantially similar activities, an exemptive relief process should not be required.

c) Introducer/Carrier Broker Arrangements

Recommendation: Investment Dealer Rule 2430 should be removed.

Proposed Investment Dealer Rule 2430 will serve as an inappropriate impediment to both mutual fund dealers and carrying brokers entering into introducer/carrier arrangements The registerable activity conducted by a mutual fund dealer does not change based upon the amount of business it introduces to a carrying broker. The carrying broker is performing well defined back-office functions for the mutual fund dealer.

The significant consequences to the mutual fund dealer of having their business model shift to new capital requirements, compensation models, etc. may render pointless the positive revisions to Investment Dealer Rule 2400.

d) Quebec Harmonization

Recommendation: Full and timely harmonization to the New SRO of functions performed by the AMF and La Chambre, and investor protection fund coverage.

In the 2021 *CSA Position Paper 25-404*, the AMF stated, "In addition to the many benefits associated with the CSA's position, greater harmonization of the SRO framework applicable in Québec with that of other Canadian jurisdictions will reduce complexity and confusion for investors, who will then benefit from comparable protections, regardless of their place of residence." We appreciate the support of the AMF in recognizing the New SRO and urge a consolidation of functions currently conducted by La Chambre and the AMF to the New SRO and of investor protection fund coverage at the earliest opportunity.

The IIAC strongly disagrees with the proposed requirements in Draft By-Law Number 1, section 2.9 and Schedule 4 Item 12(j), which would require the New SRO to defer its complaint process to the *Act respecting the regulation of the financial sector*, CQLR c. E-6.1 ("LESF") and the *Québec Securities Act*, CQLR, c. V-1.1 ("LVM"). A harmonized, pan-Canadian approach is required. The IIAC also outlined significant concerns specific to LESF/LVM in its 2021 Comment Letter[1].

e) Registration Responsibility

Recommendation: The New SRO should register all individuals it oversees.

It is proposed that the CSA retain responsibility for registering individuals seeking registration as "dealing representative, mutual fund dealer", while the New SRO has responsibility for registering investment dealer dealing representatives. The New SRO should have the registration responsibility for all individuals to improve efficiencies.

II. New SRO Governance

Recommendation: In order to effectively set industry standards and regulations, the New SRO must remain informed by industry, who has a keen, front line and deep understanding of the investor needs it services.

a) Board of Directors:

i) Industry Directors:

Recommendation: Every effort should be made to ensure that Industry Directors on the New SRO Board are a realistic reflection of the investment industry.

In order to effectively set industry standards and regulations, the New SRO must remain informed by industry.

With only six Industry Directors, it will not be possible for the board to have direct representation across business models including scale of business operations. We suggest the Articles and Draft By-Laws have further flexibility and refer to a minimum and maximum number of directors, rather than being fixed at 15.

We note that section 5.3 of Draft By-law Number 1 states:

[1] See https://iiac.ca/wp-content/uploads/IIAC-comments-on-AMF-Complaint-handling.pdf

The Governance Committee will evaluate individual candidates based on their ability to contribute a range of knowledge, skills and experience and having regard for the required composition of the Board and the fact that the Board, as a whole, should be representative of the Corporation's various stakeholders

We encourage the CSA to consult with Members on a skills matrix to be made available to its Governance Committee and to the public and to be updated regularly to reflect evolving market and investor needs.

We note that s. 12.3 of Draft By-law Number 1 requires all members of the Governance Committee to be Independent Directors. Industry board members may also bring value to the Governance Committee, the membership of which should reflect the composition of the Board.

ii) Independent Directors

Recommendation: The meaning of independence should be expanded beyond the reference to individuals who have no material relationship to the Corporation or Member and include a requirement for individuals to have independence from securities regulators and securities related advocacy associations. In addition, the cooling-off period should be reduced to 2-years.

An expanded definition of independence provides both greater assurances and appearances that board members are set apart from past influences and that the New SRO will deliver fair process.

While we appreciate that the CSA modelled the definition of independent on National Instrument 52-110 *Audit Committees*, meaningful distinctions can be made between the objectives of an audit committee for a single issuer and the role of Independent Directors on the Board of Directors of the New SRO.

The meaning of independence outlined in section 1.3 of Draft By-Law Number 1 should be expanded beyond the reference to individuals who have no material relationship to the Corporation or Member to include a requirement for individuals to have independence from securities regulators, federal or provincial agencies responsible for financial sector policy or consumer policy or regulation and securities related advocacy associations.

For example, the By-Laws for the Ombudsman for Banking Services And Investments ("OBSI") note the following categories as requiring a cooling-off period to qualify as independent:

(i) current director, executive committee member, officer or employee of a Self-Regulatory and Industry Entity or have been a director, executive committee member, officer or employee of a Self-Regulatory and Industry Entity in the two (2) years prior to election as a Community Director.
(ii) be a current employee of a federal, provincial or territorial government working in a department or agency responsible for financial sector policy or regulation or consumer policy or regulation or have been an employee of a federal, provincial or territorial government working in a department or agency responsible for financial sector policy or regulation or consumer policy or regulation if the employee or former employee is or is perceived to be insufficiently independent and impartial as determined by the Board having regard to such factors as the Board considers relevant, including the nature of the employment or former employment, the employee's or former employee's skills, experience, and reputation, and in the case of former employees, the length of time that has passed since the relevant employment ended

The OBSI requires a 2-year cooling off period, which the IIAC believes is appropriate.

b) Industry Advisory Committees and Councils

Recommendation: Further consideration need be given to the most effectual Industry Advisory Committees/Councils who require clear mandates and Board access.

i) District/Regional Council

In general, the Draft By-Law Number 1 and Interim Investment Dealer/Mutual Fund Dealer Rules remove formal responsibilities from District/Regional Councils and assign the responsibility to the Corporation or New SRO Staff, including for proficiency exemptions, business plan considerations, and the nomination of hearing committees. The particulars regarding how Members may seek and obtain approval from the Corporation or Senior Staff and appropriate escalation and appeal procedures remain to be determined and should be subject to fulsome member consultation.

Section 10.2(2) of By-Law Number 1 provides that the Board may appoint one or more ex-officio members of District/Regional Council. As these councils are advisory in nature, the appointment of or invitation to ex-officio members may be at the election of the Regional Council.

A clear advisory mandate for Regional Councils should be formulated through further member consultation.

ii) National Council

The IIAC supports the creation of a National Council as described in the CSA's FAQs respecting the New SRO's Interim Rules as follows:

> The National Council will be comprised of the Chairs and Vice-Chairs of each Regional Council and will act as a forum for cooperation and consultation among the Regional Councils and provide recommendations on regulatory policy matters.

To assist with effective, efficient industry regulation, the National Council should have formal standing before the Board at each meeting.

iii) Other Advisory Committees

The IIAC supports section 12.7 of By-Law Number 1, which empowers the Board to appoint such advisory bodies as it may deem advisable and may delegate power of appointment to a director, officer, committee or employee of the Corporation.

We appreciate the New SRO will be reviewing its Advisory Committees and wishes to do so in consultation with its Members.

In continued efforts to ensure valuable and operational regulation, we suggest an Advisory Committee(s) reflective of executive leadership at various dealer models as a valuable resource for the New SRO Board.

c) New SRO Public Interest Mandate

Recommendation: The New SRO mandate should be expanded to include capital growth, minimizing regulatory inefficiencies and proportionate regulation.

The IIAC supports the public interest mandate set out in section 2.1 of Draft By-Law Number 1. It should be expanded to include:

(i) encouraging capital formation and growth.
(ii) fostering fair, efficient and competitive capital markets and confidence in those markets.
(iii) eliminating duplicative costs and minimizing regulatory inefficiencies.
(iv) advancing proportionate regulation.

In order to meet its public interest mandate, the New SRO should be required to conduct and produce a meaningful needs analysis and cost benefit analysis for its proposed or amended rules, policies and guidance. Reference to a needs analysis and cost benefit analysis should also be included in its mandate.

Similarly, with respect to CSA Oversight (which will be addressed in additional respects further in this letter), at Appendix C of the proposed Memoranda of Understanding (the "MOU"), Joint Review Protocol, paragraph 3(c): filings for public comment Rule Changes, we note that the New SRO is now to file '*data*' for each proposed public rule change and "the Board resolution, including the date that the proposed Rule Change was approved, and *a reasonable explanation of why* the Board has determined that the proposed Rule Change is in the public interest" (subparagraph (ii)). It should be stipulated that the data and 'reasonable explanation of why" include a needs analysis and cost/benefit analysis which is also available for public comment.

d) District Hearing Committees and Appointment

Recommendation: There should be additional consultation on the Appointments Committee which will be evaluating Members to be appointed to the District Hearing Committees.

Section 12.5 of the Draft By-Law Number 1 does not provide any details as to the criteria that the Appointments Committee will consider when determining nominees to appoint to the District Hearing Committees. Given the important role District Hearings currently have in proceedings, nomination criteria should be subject to further input and, when finalized, be made publicly available.

e) Amendment of By-Laws

Recommendation: In order to achieve a harmonious, pan-Canadian, self regulatory framework, securities regulatory authorities and securities commissions should consider, rather than, supersede the rights of Members and be subject to the New SRO's By-laws.

According to s. 18. 1(2) of Bylaw No. 1:

> The right of Members to vote to confirm, reject or amend a By-law, or exercise other rights granted to Members under the Act, is subject to the authority, pursuant to applicable securities laws and the Recognition Orders, of the securities commissions and securities regulatory authorities to make any decisions relating to the By-laws of Corporation.
>
> In the event of an inconsistency between the By-laws and any direction provided by a securities commission or securities regulatory authority to the Corporation, the direction provided by the securities commission or securities regulatory authority will govern.

We suggest that s. 18(1) of By-law Number 1 be removed.

III. CSA OVERSIGHT

Recommendation: Proposed CSA Oversight should be amended to allow the New SRO sufficient discretion, authority, and deference to enact its mandate.

The CSA explained in its 2021 *CSA Position Paper 25-404* that:

ii) They took a fact and data-based approach to the assessment of options, and after careful consideration and analysis, rejected a CSA-led regulatory organization (among the various options) in favour of the creation of a New SRO to address the concerns noted with the current two SRO system.
iii) The New SRO "will continue to provide the industry with the inherent benefits of self-regulation by maintaining a self-regulatory model".

The IIAC supported the above position.

The New SRO requires sufficient discretion, authority, and deference to enact its mandate.

As a result of the proposed enhancements to the governance structure of the New SRO, including the requirement for a majority of independent directors, a comprehensive public interest mandate, and the creation of an investment advisory panel, we believe the level of CSA oversight proposed is excessive and will hinder the New SRO's necessary ability to function as a self-regulatory organization.

Appendix A of proposed MOU states:

> **Non-Objection Process:**
>
> **1. Purposes of non-objection process**
>
> The RRs agree and hereby adopt a non-objection process for the following purposes:
>
> (a) nomination of each candidate for an Independent Director position.
> (b) appointment of the Chief Executive Officer (**CEO**).
> (c) changes to the Board skills matrices.
> (d) changes to the CEO skills sub-matrix; and
> (e) approval of a Board exemption, or an amendment or extension to a Board exemption, from a Rule that could have a significant impact on:
> (i) Members and others subject to [New SRO]'s jurisdiction; or
> (ii) the capital markets generally, including, for greater clarity, particular stakeholders or sectors.
>
> **2. Non-objection criteria**
>
> Without limiting the discretion of each RR, the RRs agree to consider these factors when following the non-objection process:
>
> (a) whether the proposed action subject to the non-objection process is in the public interest.

(b) whether [New SRO] has provided sufficient analysis; and
(c) whether there are conflicts with applicable laws or the terms and conditions of [New SRO]'s recognition.

The non-objection process and criteria is unwarranted. The New SRO has a public interest mandate, an obligation to conduct a sufficient analysis and should not be acting in conflict with applicable laws or the terms and conditions of its recognition. It also has its own enhanced governance structure, including a Board of Directors, comprised mainly of independent directors, to ensure oversight.

The proposed overarching and prescriptive non-objection framework outlined in the MOU functionally removes all decision-making autonomy from the New SRO. For example, the New SRO Board is fettered by the level of CSA oversight, as all exemption requests, extensions or amendments granted by the New SRO Board are subject to CSA non-objection. The Board may not grant the exemption unless it has been vetted by the CSA in advance. Effectively this means that all exemption request decisions are made by the CSA (or principal regulator) rather than the New SRO. If the CSA is directly overseeing all exemptions, any appeal mechanism to the Board of the New SRO is essentially mute.

We recommend that Appendix A of the MOU be removed.

IV. Other Considerations

a) Consolidation Costs

The IIAC recommends the costs of SRO consolidation be paid for by the current SROs Monetary Sanctions funds.

The creation of the New SRO is in the public interest. We therefore recommend that the New SRO use funds collected from Monetary Sanctions to offset all costs associated with its development and implementation.

For further clarity, section 16(1) of the Recognition Order, which permits for monetary sanctions collected by IIROC and MFDA, to be used directly and indirectly in the public interest, should specifically refer to the recovery of these costs.

b) New SRO Transition Considerations

Reasonable timelines for implementation, related costs considerations and member consultation should be a priority. For example, the new name for the New SRO will requires widescale changes across all channels of client communications.

Ongoing, meaningful but efficient member dialogue is necessary to move from interim for final rules within a defined time-period.

c) CSA 25-305 the New Investor Protection Fund

The IIAC appreciates the important roles of the Canadian Investor Protection Fund ("CIPF") and the MFDA Investor Protection Corporation ("MFDA IPC") have. At this time, IIAC members do not have comments on the Draft Coverage Policy, Claims Procedures or Appeal Committee Guidelines.

We suggest that continued use of the name “CIPF” to minimize client and dealer operational disruption.

The IIAC wishes to support the CSA in its consideration of these recommendations. We would be pleased to discuss them with you and answer any questions that you may have in respect of our comments. We encourage you to reach out to us in these regards.

Yours sincerely,

Laura Paglia

President & CEO
Investment Industry Association of Canada