

September 20th, 2023

Delivered By Email: stabesh@iiroc.ca;

In care of

Canadian Investment Regulatory Organization
Sherry Tabesh-Ndreka
Acting Senior Director, Registration
416-943-4656
stabesh@iiroc.ca (mailto:stabesh@iiroc.ca)

Dear Ms. Tabesh-Ndreka:

Re: Consultation Paper – Proposed Proficiency Model- Approved Persons under the Investment Dealer and Partially Consolidated Rules – Notice 23-0094

Background

BMO Nesbitt Burns Inc. (BMO NBI) appreciates the opportunity to respond to the Canadian Investment Regulatory Organization’s (CIRO) Consultation Paper – Proposed Proficiency Model- Approved Persons under the Investment Dealer and Partially Consolidated Rules, published on July 7, 2023 (the Consultation). BMO NBI supports CIRO’s goal to “create, maintain and promote high proficiency standards and a robust proficiency regime in the investment industry” and concurs that the proficiency of the professionals in Canada’s capital markets is essential to capital formation and growth and the protection of investors.

Proposed proficiency model

We agree with the opinion expressed in the Consultation that greater oversight and involvement of CIRO, combined with greater currency and relevancy of content, could lead to improvement of the Approved Persons’ competency assessment. We support an “assessment centric” model which supports the ability of individual firms to leverage training and proficiency solutions that meet their particular business needs. The departure from a single source training model provides an opportunity for diversification, competition, reduced costs and enables customized solutions that more appropriately meet individual firm requirements.

Other aspects of the model, however, may lead to unintended negative consequences, including increased regulatory burden and cost to firms, and increased barriers to entry into the profession. We look forward to working with CIRO to ensure that the new proficiency model improves upon the current model while avoiding these possible pitfalls.

General industry exam

While we agree with the Consultation's aim to reduce number of exams where possible, the achievement of this aim should not result in individuals being required to take exams that assess competencies unrelated to their positions. As such, CIRO should consider alternatives to a general industry exam in the new proficiency model. For instance, specific Approved Persons exams should be constructed to ensure that applicants demonstrate general industry knowledge.

Firm sponsorship

Although requiring firm sponsorship to take nine Approved Persons Exams is similar to the Financial Industry Regulatory Authority's (FINRA) requirements in the United States, the Consultation does not make it clear why this would be a practical benefit to preserving the integrity of Canadian capital markets.

Under FINRA's model, firms are required to submit appropriate registration applications for individuals, which can be quite voluminous.¹ Canadian dealers are currently not required to file any paperwork for their employees to take exams and the responsibility lies with the employee to obtain required qualification. If the Consultation's proposal for firm sponsorship is enacted as proposed, it would increase the burden on Canadian dealers on top of existing registration requirements, even if the sponsorship mechanism would be simpler under CIRO's rules, when compared to FINRA's regime. Dealers would likely have to increase headcount to comply with the sponsorship requirement, with the onboarding time for new and transferred employees increasing as well.

Furthermore, individuals may currently choose to proactively qualify for a position for which they are aspiring. The proposal as currently drafted would create an entry barrier into the profession, may prevent aspiring financial professionals from proactively earning required qualifications and impede diversity and inclusivity employment initiatives. This seems to conflict with CIRO's findings from its stakeholder engagement.

Supervisors exam

Although the new high-level competency profile for all Supervisors² outlines general supervisory responsibilities, authority, and accountability, the Specific Supervision Responsibilities outlined in Section 3 of the Supervisor Competency Profile will likely differ for various categories of supervision. For example, under the current CIRO Corporation Investment Dealer and Partially Consolidated Rules,³ proficiency requirements for Supervisors of options accounts and Supervisors of research reports are substantially different.

¹ <https://www.finra.org/rules-guidance/rulebooks/finra-rules/1200>; <https://www.finra.org/media-center/blog/funding-finras-mission>; <https://www.finra.org/registration-exams-ce/qualification-exams>

² <https://www.iiroc.ca/media/19671/download?inline>

³ Rule 2602 - <https://www.ciro.ca/media/16/download?inline>

Consolidating Supervisors' training/exam into one may lead to either insufficient general content for a specific type of supervision or unnecessarily overwhelming the exam with a substantial amount of information which is irrelevant to the responsibilities of some registrants. Given that the proposal contemplates scenarios where several courses would be taken for certain supervisory roles, similar to the current requirements, it would be beneficial to maintain the current approach for Supervisors' exams.

CIRO Mandatory professional conduct training and Mandatory Continuing Education

Ethical and professional conduct are paramount for maintaining the integrity of Canadian capital markets. Investment dealers operate in a highly regulated environment. Standard industry practice is to conduct periodic internal ethics, legal and compliance training for all employees typically at least annually, often including participatory elements, such as interactive courses and quizzes. New employees are generally required to successfully complete this training upon joining a dealer.

The current model for fulfilling continuous education requirements allows a degree of flexibility for firms and Approved Persons. They either can choose a training from one of approved providers or take one of the internally offered and CIRO-approved trainings. Ethical and professional conduct considerations are addressed by internal ethics, legal and compliance training.

The practical utility of the trainings and continuing education hours universally mandated and delivered by CIRO is unclear. The implementation of the CIRO-mandated trainings as described in the Consultation will result in duplication of effort for some individuals and remove flexibility for dealers and Approved Persons. This will increase the regulatory burden on both large and smaller dealers. Dealers will be obligated, on top of sponsoring employees to take qualification exams, to separately track CIRO's mandatory professional conduct training and CIRO's Mandatory Continuing Education and remaining mandated continuous education hours as it stands right now. We recommend either keeping the status quo or provide exemptions to firms that already have robust Code of Conduct/ Business Conduct/ Compliance periodic trainings.

Firm training- institutional

Firm training for Investment Representatives (IR) and Registered Representatives (RR) in the retail environment is justifiable, considering the nature of the business and client base, which by its nature requires more protection under securities regulation.

We do not believe that the Consultation demonstrates a need for firm training programs for institutional IRs and RRs. Especially considering existing sections of the retail IR and RR training programs, such as those on Tax and Retirement Planning, Relationship Management/Practice Management or Equities⁴. We strongly recommend reconsidering introduction of the formal Institutional Firm training requirement. Dealers' institutional clients are often sophisticated and looking for specialized solutions. Therefore, general institutional KYP or account administration training by the firm will not aid CIRO's regulatory objectives. Not only will the development and administration of such a program increase the regulatory burden on dealers and Approved Persons, but it is also unclear what practical benefit it would bring to the institutional market.

⁴ <https://www.iiroc.ca/news-and-publications/notices-and-guidance/guidelines-90-day-training-program>

Baseline education or experience for RRs

While we agree that RRs must possess an appropriate level of education and experience to effectively serve the investing public and preserve the integrity of Canadian capital markets, the practical value and utility of requiring a prescribed baseline education or relevant experience for RRs in both retail and institutional setting is unclear. Existing proficiency requirements in the IDPC rules and proposed competency profiles set comprehensive proficiency requirements.

The Consultation does not specify what a “relevant diploma or degree” or “relevant experience working in the financial industry” are. Financial professionals in Canadian capital markets have a variety of backgrounds and career paths that reflect our society’s diversity. A narrow and restrictive definition of “relevant” may lead to limiting the pool of available candidates, impede diversity and inclusivity employment initiatives, and create an unnecessary entry barrier into the profession. This seems to conflict with CIRO’s findings from its stakeholder engagement.

We recommend either keeping the status quo or ensuring that the new model recognizes relevant education and experience obtained from reputable jurisdictions outside of Canada.

Recognition of existing qualifications

The Consultation does not specifically address the transition to the new proficiency model. CIRO should make it clear that the successful completion of Approved Person requirements under the current model will be recognized in the new model once it is put in place.

Conclusion

It is indisputable that high proficiency standards play a key role in delivering investor protection and strengthening capital markets’ integrity and efficiency. Greater currency and relevancy of examination content, more responsiveness to changes in the industry as well as greater oversight and involvement from the regulator are great objectives. However, based on the information provided in the consultation paper, it is unclear what significant gaps in the proficiency assessment of Approved Persons need to be addressed by dramatically changing the proficiency assessment model. BMO supports transition from a course centric to an assessment model, however, the proposed changes extend beyond this approach. They introduce requirements that potentially increase regulatory burden and barriers to entry into the profession. In light of these considerations, we kindly ask CIRO to reconsider some of the proposed changes represented in the model.

Sincerely,



Dave Moore,
Managing Director and Chief Compliance Officer
BMO Capital Markets