CFA Societies Canada

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VIA EMAIL

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Re: CIRO Bulletin 24-0145 – Rules Bulletin – Request for Comments – DC Rules – Rule Consolidation Project – Phase 3 (the "Consultation")

The Canadian Advocacy Council of CFA Societies Canada (the "**CAC**")[1] appreciates the opportunity to provide the following general comments on the Consultation and responses to the specific questions listed below.

We are pleased to see these harmonization and simplification initiatives that align securities laws, the legacy MFD Rules and the IDPC Rules, where practicable, as it promotes compliance by and clarity for the industry. The alignment of the rules regarding ownership of a significant equity interest across dealer types is a step in the right direction, as we do not see any strong underlying policy rationale to support different treatment for mutual fund dealers. For the legacy pre-approval requirement of ownership changes sub-10% in the IDPC rules, we support post-notification of all changes (sub-10%) as an acceptable policy solution. We are also pleased with the further alignment of the limitation period to six years, and the ability to commence proceedings on events that occurred within the last six years.

[1] The CAC is an advocacy council for CFA Societies Canada, representing the 12 CFA Institute Member Societies across Canada and over 21,000 Canadian CFA charterholders. The council includes investment professionals across Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. Visit www.cfacanada.org to access the advocacy work of the CAC.

As the global association of investment professionals, CFA Institute sets the standard for professional excellence and credentials. The organization is a champion of ethical behavior in investment markets and serves as the leading source of learning and research for the investment industry. CFA Institute believes in fostering an environment where investors' interests come first, markets function at their best, and economies grow. Spanning nearly 200,000 charterholders worldwide across 160 markets, CFA Institute has ten offices and 160 local societies. Find us at www.cfainstitute.org or follow us on LinkedIn and X at @CFAInstitute.

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With respect to the requirements relating to principal and agent relationships, and the permissible use of personal corporations to conduct non-registerable and registerable activities, we would appreciate if CIRO could provide (as previously requested) further commentary regarding its position on our investor protection-related concerns on this initiative. Further, we reiterate our position that clarity should be sought from tax authorities **prior to** proceeding with any change initiative, to better ensure meaningful stakeholder benefit given the significant compliance burden that would be required to enact any change and the costs on industry of the enhanced monitoring that would be required go-forward.

With respect to settlement hearings, we would prefer the flexibility of the MFD Rules which empowers the hearing panel to determine in what circumstances a settlement hearing could be made public, as there may be sufficient public interest in certain cases.

The following are our comments on the specific questions set out below.

Question #1 – Process used for publishing for public comment

Many of comments received as part of the first phase of our Rule Consolidation Project indicated that once the initial publication of the five phases is complete, any subsequent republication of the proposed rules should be as an entire rulebook (i.e. not as separate phases). Should we republish the entire set of proposed Dealer and Consolidated Rules prior to their approval?

In our view, republication of the entire set of proposed Dealer and Consolidated Rules prior to their approval should not be necessary, as sufficient notice should have been provided throughout the various phases of the prior public consultation processes, unless there are significant changes. We would encourage CIRO to instead focus its resources on expediting the implementation of the consolidated rules and therefore proceed with the approval without republication once the phased consultations are complete.

Question #2 – Implementation

Many of comments received as part of the first phase of our Rule Consolidation Project indicated the Dealer and Consolidated Rules should be implemented all at once (and not in phases). Should we implement the entire set of proposed Dealer and Consolidated Rules at the same time? How long a period should we allow for the implementation of the proposed Dealer and Consolidated Rules?

We would support a strategy of implementation of all of the consolidated rules at once. We recognize that this may be more onerous to comply with than a phased approach to implementation for some dealer members, but believe an implementation period of one year from the completion of the final proposed Rules should be adequate, given the lengthy period of consultations throughout the Project. If or where certain dealers or business models need more time, these should be dealt with via time-limited relief, by application to CIRO staff.

Question #3 – Cross-guarantee requirements

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To ensure a level playing field for investment dealers and mutual fund dealers, we have proposed to require cross-guarantees between Dealer Members and their related companies. The term "related company" is exclusively used to explain the relationship between Dealer Members (through at least 20% common ownership of both Dealer Members (directly or indirectly)). The result of adopting this amended IDPC and MFD rule requirement is that commonly owned investment dealers and mutual fund dealers will have to cross-guarantee each other. Does requiring cross-guarantees between investment dealers and mutual fund dealers cause undue burden? If yes, please explain.

We do not believe there is any undue burden generated by the proposed requirement for commonly owned investment dealers and mutual fund dealers having to cross-guarantee each other. In any event, in our view the investor protection benefits of this requirement would outweigh any administrative burden that may arise, and as such we are in support of this proposal.

Question #4 – Membership disclosure policy

The current membership disclosure requirements applicable to investment dealers and mutual fund dealers have the following key differences:

- **the mutual fund dealer policy requires that both the CIRO logo and a link to the CIRO website be included on account statements, whereas the investment dealer policy only requires the CIRO logo (the proposed Membership Disclosure Policy found in Appendix 5 extends the mutual fund dealer requirement to all Dealer Members)**

- **the investment dealer policy requires that the CIRO decal be displayed at all public-facing business locations, whereas the mutual fund dealer policy does not have a similar requirement (the proposed Membership Disclosure Policy found in Appendix 5 removes this requirement for all Dealer Members)**

- **the investment dealer policy requires that the CIRO official brochure be provided to clients at account opening or upon request, whereas the mutual fund dealer policy does not have a similar requirement (the proposed Membership Disclosure Policy found in Appendix 5 extends the investment dealer requirement to all Dealer Members)**

Do you agree with the changes highlighted above and the proposed Membership Disclosure Policy found in Appendix 5? If not, please explain.

With respect to the instances above and in general, we support an increased standard of membership disclosure. In our view, it is important for clients to understand and be reminded of the organization that is responsible for regulating the conduct of the business with which they are interacting. As such, we would support a requirement for both the CIRO logo and a link to the CIRO website to be included on account

statements. Additionally, we believe that the CIRO decal should be displayed at all public-facing business locations for both investment dealers and mutual fund dealers, and that the investment dealer requirement regarding CIRO's official brochure should be applied to mutual fund dealers as well.

Question #5 – Account Transfers

Our assessment of the proposed harmonization of the transfer requirements suggests minimal impact to dealer members. Do you agree with this assessment? If not, what potential challenges do you anticipate?

We are generally in support of the proposed harmonization of the rules for account transfers and bulk account movements. However, we note that mutual fund dealers and the transfer of mutual funds are typically conducted through a manual process that can be lengthy, and as a result, in some cases such transfers may become the subject of investor complaints. Alternatively, CDS ATON provides for an automated, speedy transfer, with real time queries on asset details that help promote better investor outcomes and therefore reduce complaints. We would strongly suggest CIRO consider what additional mechanisms or requirements can be pursued for mutual fund dealers that are not participants of CDS ATON, so that investors of those dealers can have similar positive outcomes, and that cause for investor complaints can be proactively averted. We understand that this may require a separate project, with pricing and centralization concerns to be further considered, however complaints and prior regulatory projects have suggested improved customer service is urgently needed in this space.

Question #6 – Trading and delivery standards

We believe that harmonizing trading and delivery standards for securities will be of minimal impact to Dealer Members' current practices. Do you agree? Why or why not?

We agree that this harmonization effort will be of minimal impact.

Question #7 – Maximum fine

To deter Regulated Persons from misconduct, we propose increasing the maximum fine a CIRO hearing panel can impose to $10 million per offence, from $5 million. Do you agree with our proposal to increase the maximum fine a CIRO hearing panel can impose? Why or why not?

We strongly agree that the increase in the maximum fine per offence is warranted and should serve to increase deterrence. Additionally, because settlements of more than $5 million dollars have been previously approved, we would consider this increase as a logical extension for the enforcement powers of CIRO, based on the current nature of proceedings.

Question #8 – Sanctioned Individuals

To help ensure that individuals do not engage in any activities that defeat the purpose of any CIRO sanction they might receive, we propose barring Regulated Persons from hiring or engaging in any capacity and remunerating any individuals who are subject to a bar or suspension during the period of the bar or suspension. Under this prohibition, Regulated Persons would still be able to pay remuneration to a sanctioned individual that is:

- **consistent with the scope of activities permitted under the sanction, or**
- **pursuant to an insurance or medical plan, an indemnity agreement relating to legal fees or as required by arbitration awards or court judgment.**

Under the IDPC Rules, Regulated Persons are prohibited from engaging an individual who is permanently barred from employment with an investment dealer. Under the MFD Rules, there is no specific prohibition, however, in practice Regulated Persons cannot engage any individuals to perform securities-related business where they have been barred or suspended from doing so.

Do you agree with our proposal to expand the activity restrictions on sanctioned individuals? Why or why not?

In general, we agree with the above proposal. However, in our experience, there is a wider issue we would encourage CIRO to explore. In a recent American study conducted by Colleen Honigsberg, Edwin Hu and Robert Jackson (see *Regulatory Arbitrage and the Persistence of Financial Misconduct*, 74 Stan. L. Rev. 737 (2022)), the authors found high recidivism rates for those financial advisors with a history of serious misconduct, and that advisors with a misconduct history tended to "wander" to other financial advisory regimes which may be relatively lax or otherwise more welcoming. Although the American regulatory landscape differs from Canada's, in our experience we have seen similar "wandering" from sanctioned financial advisors into adjacent advisory regimes, particularly insurance-regulated roles. We would encourage CIRO to consider what it can do both within its jurisdiction and in cooperation with other regulatory authorities by mutual agreement, or with other industry participants such as related or parent companies of dealer members, or professional bodies, to better protect investors in this regard. To this end, we would strongly encourage CIRO to explore whether bars or suspensions of individuals could be honored by affiliated or related entities (subject to different regulatory authorities) of Regulated Persons, to better protect investors who may seek the services or financial products of any such entity, where it would not otherwise be directly subject to CIRO regulation or otherwise registered under securities laws.

Concluding Remarks

We thank you for the opportunity to provide these comments and would be happy to address any questions you may have. Please feel free to contact us at cac@cfacanada.org on this or any other issue in the future.

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(Signed) *The Canadian Advocacy Council of CFA Societies Canada*

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