Member Regulation Policy
Canadian Investment Regulatory Organization Suite 260040 Temperance StreetToronto, Ontario M5H 0B4
e-mail: memberpolicymailbox@ciro.ca

Market Regulation
Ontario Securities Commission
Suite 1903, Box 5520 Queen Street West
Toronto, Ontario M5H 3S8
e-mail: marketregulation@osc.gov.on.ca

Capital Markets Regulation
B.C. Securities Commission
P.O. Box 10142, Pacific Centre701 West Georgia Street,
Vancouver, British Columbia, V7Y 1L2
e-mail: CMRdistributionofSROdocuments@bcsc.bc.ca

Re: CIRO Rule Consolidation – Phase 3

The Federation of Independent Dealers (Federation) has been, since 1996, a dedicated voice for dealers. We currently represent firms with hundreds of billions in assets under administration and tens of thousands of licensed advisors that provide service to millions of Canadians. As such we have a keen interest in all that impacts the dealer community and its advisors.

We appreciate the opportunity to provide input for this consultation. Please find our comments on specific items below, numbered to match the consultation table of contents. Our responses to the CIROs specific questions asked are included in appendix 'A'.

2.1.1 Ownership of a Dealer Member's securities (DC Rule 2100). CIRO approval will be required for the acquisition of more than 10% ownership of a dealer member and notice to CIRO will not be required for transactions resulting in the acquisition of less than 10% of a dealer member.

We agree with the reduction of this approval threshold from 20% to 10%, as long as the resulting increase in frequency of notifications to CIRO does not attract new or increasing fee amounts.

2.1.2 Dealer Member organization (DC Rule 2200). Adopt a modified version of the IDPC Rule that would be applicable to all DMs except that MFDs will not be subject to the requirement to disclose the full legal name of each institution sharing offices.

Federation MFD members appreciate this sensible burden reduction. We ask CIRO if this exception can be extended to the new class of dual-platform MFD/ID members.

2.1.2 CIRO approval will be required before creating a wholly owned subsidiary whose principal business is a securities or derivatives broker, dealer or adviser. Provision is also made for the extension of the present investment dealer cross-guarantee requirement to mutual fund dealers, with allowance for CIRO to consider exemptions.

CIRO is proposing to approve new subsidiaries involved with securities, and also to approve new subsidiaries *not involved* with securities. We object to this rule proposal.

The MFD Rule is better here as Notification doesn't involve the potential future costs, delays, and unnecessary burden related to an Approval for CIRO or the dealer member in either category *and* for CIRO itself. The MFD Rule is the streamlined burden-reduction choice for both ID and MFD channels.

2.1.2(b) CIRO proposes that dealer members obtain approval before carrying on any business other than securities or derivatives activities

Ditto

2.1.3 Principal and agent relationships (DC Rule 2300). Adopt the existing investment dealer and mutual fund dealer rule requirements relating to principal and agent relationships with no changes.

We agree and look forward to continuing engagement with CIRO via the related policy project.

2.2.1 Business continuity plan (DC Rule 4700). Investment dealer requirements will be extended with minor modifications to apply to mutual fund dealers with respect to business continuity, trading and delivery standards for transactions, account transfers, bulk account movements and derivatives risk management.

We agree with the modifications for business continuity plans. We are wary of additional burden and the specific applicability of the trading and delivery standards for MFD firms from the trading and delivery standards. We address transfers in appendix 'A', question #5.

2.3.3 Business continuity plan (DC Rule 4700). Limitation period. individuals remain subject to CIRO examination, investigation and enforcement rules for six years following the date they ceased to be a registered. The current mutual fund dealer limitation period is five years.

We agree with this extension to facilitate fulsome pursuit of wrongdoing.

2.3.4 Admissibility of witness testimony and other evidence (DC Rule 8200)

Members would request a penalty be in place for substantially erroneous or false testimony given before a hearing panel, whether that testimony be given under oath, an affirmation, or neither.

2.3.5 Settlement hearings (DC Rule 8200). Adopting the existing investment dealer provision that all settlement hearings must be closed to the public.

We agree with this proposal.

2.3.6 Sanctions (DC Rule 8200). (a) Maximum fines. Increasing the maximum fine a CIRO hearing panel can impose to $10 million per offence, from $5 million.

We disagree with the proposed increase. We address maximum fine in appendix 'A', question #7.

2.3.6(b) Specific sanctions.

We agree with harmonizing disgorgement rules. 8209(1)(ix) provision of 8209 is broad and should be a prescribed list.

e.g.: 8209
(1)(ix) any other sanction determined to be appropriate under the circumstances.
(2) A Dealer Member may be sanctioned under subsection 8209(1) based on the conduct of an employee, partner, Director or officer.

2.3.6(c) Adopt a modified version of existing investment dealer rules allowing hearing panels to prohibit, revoke or bar an individual's approval or authority to conduct securities-related business.

We don't agree with this change of prohibiting or barring an individual Regulated Person's authority to conduct securities-related business. Other regulators such as the CSA and CISRO will assess and decide upon an individuals fitness for registration under their respective authority.

2.3.7 Temporary Orders, Protective Orders and Applications in Exceptional Circumstances (DC Rule 8200).

We agree with the proposed changes, as long as specificity is added clarifying that the noted 'opportunity to be heard' is before a Hearing Panel, rather than CIRO staff.

2.3.8 Review of Hearing Panel Decisions (DC Rule 8200).

We appreciate the granting of an opportunity for MFD firms to have a securities regulatory authority review of hearing panel decisions.

2.3.14 Arbitration (DC Rule 9500). CIRO proposes to extend the investment dealer arbitration program to mutual fund dealers.

We agree and look forward to continuing engagement with CIRO via the related policy project.

2.3.15. Information sharing with the OBSI (DC Rule 9500). CIRO proposes to permit the Ombudsman for Banking Services and Investments (OBSI) to share information with CIRO relating to its investigation and review of complaints against dealer members.

We reject outright the idea of CIRO accepting OBSI investigation materials. Our members have had sufficient experience with OBSI over the years to underpin our belief that CIRO provides the higher standard of investigation and expertise in securities matters. We do not want that high standard to lose its edge or regulatory perspective by referencing materials from a consumer complaint body. We want our SRO to do its own investigations.

In conclusion, while the Federation is supportive of CIRO's ongoing effort to develop a harmonized and balanced rulebook, we believe the adjustments we noted are necessary for ensuring that the consolidated rulebook accurately reflects needs of members and fosters a regulatory environment that is both fair and fosters capital market growth. There is much to appreciate with these proposed rules, and we look forward to the next steps.

We appreciate the opportunity to provide feedback on this important consultation and anticipate the opportunity to establish dialogue with both the transfer, arbitration, and incorporation project teams to provide input prior to the publication of their final recommendations.

Sincerely,

Matthew T. Latimer
Executive Director,
Federation of Independent Dealers

Appendix 'A'

CIRO Questions

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?

A. We would prefer to have an opportunity to review the completed ruleset. Following phases of rule consolidations can be published separately for consultation.

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?

A. A minimum implementation period of two years should be established for firms to review assess and implement these uniquely comprehensive rule changes that impact nearly every aspect of their businesses.

Question #3 – Cross-guarantee requirements
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.

A. Our single concern is that the cross guarantee could imperil the second entity in certain circumstances.

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.

A. We agree with these changes to membership disclosure. We request an appropriate transition period for ID firms to implement statement changes as these can be cumbersome and costly. MFD (all firms) should be able to satisfy the requirement of providing an official brochure electronically, while making physical brochures visibly available to clients within office spaces that are open to clients.

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?

A. We have a few comments in response to this question. It appears the rules need to be modified to remove specific references to CDS and/or their ATON service procedures for firms that don't subscribe to that service.

The rule proposal states that MF dealer fund transfers are addressed via 4860 Non-certificated mutual funds. Aspects such as 4854 communications read as if MF dealers are not exempted from DC Rule sections 4852-4859. We suggest including either a specific statement of exemption for 4852-4859 for Non-ATON firms, or indicate their applicability is specifically for CDS/ATON participants.

4853. Transfer through a recognized depository
Whenever possible, a Dealer Member transferring a client account must transfer that account through a recognized depository.

A. Fundserv does not appear on the list of recognized depositories.[1]

4854. Communications between Dealer Members
(1) Communications between Dealer Members must take place by electronic delivery through CDS's account transfer facility, unless both Dealer Members agree otherwise.

[1] List of acceptable clearing corporations and acceptable securities locations (Depositories and Clearing Agencies) (https://www.ciro.ca/media/2158/download?inline=1)

MFD transfers and related processes and communications don't normally occur through the CDS transfer facility.

4855 (2) After the client gives written authorization to the receiving Dealer Member, the receiving Dealer Member must:
(i) promptly send a request for transfer (using an account transfer authorization form approved by the Corporation) through CDS to the delivering Dealer Member,

Ditto

4856. Delivering Dealer Member – response to request for transfer
(2) The return date in clause 4856(1)(i) must be no later than two clearing days after the date that the delivering Dealer Member received the request for transfer.

A. The ATON (RET or Return date) Function doesn't apply to dealers not using ATON. Non-ATON firms need to be exempted from the Return date requirement (and procedure), which is an ATON software function. If Fundserv moves ahead with the Transferserv project it may include a return date function and requirement.

If an exemption isn't contemplated, we request further detail on how CIRO would expect non-ATON member firms to fulfill this net-new requirement.

4857. Asset transfer
(1) Within one clearing day after the specified return date the delivering Dealer Member must commence, or cause CDS's account transfer facility to implement automatically, the transfer of the assets through CDS.

A. This is the third clearing day following receipt of a properly completed transfer request and is a reasonable requirement. 'CDS' could be amended to 'approved facility'.[2]

4859. Failure to settle
IDPC Rules must only make available forced settlement methods that are equally available to both MFD and ID members. Keeping them equivalent between non-equal firms prevents them being used punitively, aggressively against MFDs that cannot respond in kind. Ten days is a strict timeline and welcome improvement without the unnecessary costs of buying-in or securities lending applied. Would CIRO execute buy-ins on behalf of MFD firms?

As mentioned in the rule proposals, there is a separate project to modernize transfer practices. We believe this is where forced settlements should be fully considered and balanced. At present they must be carved out for MFD delivering firms.

[2] ATON PARTICIPANT PROCEDURES (https://www.cds.ca/resource/en/57)

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?
A. Please see our response to question five.

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?
A. We disagree with the proposed increase. The Canadian justice system should pursue remedy for amounts this significant and receive the support of CIROs domain expertise where required. Maintaining the current level may protect against the issue seen by the SEC with appeals to the court against its fine-imposing and quasi-judicial system.[3]

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?

A. An individual who is subject to sanctions should not be prohibited from earning a living income within the industry. Doing so has the potential to place the Dealer in conflict with labour laws or placed in a position where it becomes necessary to terminate the individual without cause resulting in unnecessary severance costs. CIRO should consider expanding the scope of prohibited activities for sanctioned individuals without denying their right to employment.

[3] Supreme Court Curbs SEC's In-House Judges in Fraud Cases (https://www.advisorhub.com/supreme-court-curbs-secs-in-house-judges-in-fraud-cases)