ANDY MITCHELL
President and CEO *Président et chef de la direction*
amitchell@ific.ca 416 309 2300

July 17, 2024

Delivered By Email: memberpolicymailbox@ciro.ca

Member Regulation Policy
Canadian Investment Regulatory Organization
Suite 2000
121 King Street West
Toronto, Ontario M5H 3T9

Dear Sirs and Mesdames:

RE: CIRO Rule Consolidation Project – Phase 3

IFIC is pleased to provide the Canadian Investment Regulatory Organization (**CIRO**) with our comments on the Rule Consolidation Project – Phase 3 (**Consultation**).

IFIC is the voice of Canada's investment funds industry. IFIC brings together approximately 150 organizations, including fund managers, distributors and industry service organizations to foster a strong, stable investment sector where investors can realize their financial goals. IFIC operates on a governance framework that gathers member input through working committees. The recommendations of the working committees are submitted to the IFIC Board or board-level committees for direction and approval. This process results in a submission that reflects the input and direction of a broad range of IFIC members.

SUMMARY

IFIC supports the CIRO Rule Consolidation Project (**Project**). In our comment letters dated December 19, 2023, on Phase I of the Project and dated March 11, 2024, on Phase 2 of the Project, we set out a number of principles which will guide our members' analysis of the proposals in each phase of the Project. We set these principles out again below. We request CIRO publish the entire final CIRO Dealer and Consolidated Rules (**DC Rules**) prior to their approval after the completion of Phase 5. This is necessary and will give members an opportunity to assess and provide final feedback to CIRO on the proposed rules as a whole. Doing so would provide members with the opportunity to identify any concerns and provide overall feedback before the DC Rules are finalized. We also emphasize the importance to our members of the Project phases being implemented simultaneously, not in phases, to avoid duplication and reduce implementation risk. We also recommend a sufficient implementation period for our members to make required IT changes as well as any necessary changes to policies and procedures, training and operational matters. In addition, we make suggestions for improving the efficiency of the consultation process for the remaining phases of the Project and for all future CIRO consultations - in particular we strongly urge CIRO to provide a minimum 90-day comment period for all consultations. We also share our members' views on CIRO developing conforming CIRO guidance and on the bulk transfer, shared office premises, business continuity plans, maximum fine, and arbitration proposals in the Consultation.

In Appendix A we provide answers to the eight questions posed in the Consultation**.**

GUIDING PRINCIPLES

The following guiding principles inform the analysis and discussion of our members concerning the current Consultation and will inform the analysis and discussion of the remaining phases of the Project.

1. Like dealer activities should be regulated in a like manner.
2. Regulatory arbitrage between investment dealers and mutual fund dealers should be minimized.
3. Current mutual fund dealers that choose to continue as mutual fund dealers should be minimally impacted by any changes to the rules.
4. Rules should be sufficiently flexible to permit a spectrum of business structures and offerings.
5. Where appropriate and practical, principles-based rules that are scalable and proportionate to the different types and sizes of dealers and their respective business models should be adopted.
6. Reviews, audits and examination of dealers should be consistent in the interpretation and application of the rules, regardless of business model.

IMPLEMENTATION OF THE RULE CONSOLIDATION PROJECT

As we noted in our December 19, 2023, and March 11, 2024, comment letters, it is critical that, while the consultations on the Project are rolled out on a phased basis, the coming into force of the entire DC Rules for the Project be done at one time, after a sufficient implementation period. Our members request that further feedback be solicited as upon republication of the entire rulebook following Phase 5, when our members have seen all of the proposed changes and can provide well-informed final feedback. While numerous parties have urged CIRO to proceed expeditiously with the Project, we are concerned that moving too quickly in a piecemeal fashion and providing an insufficient implementation timeline will cause regulatory inconsistencies, client confusion and significant implementation risk. An unsuccessful launch of the Project would be counter-productive to achieving the regulatory objectives and would undermine dealers', investors' and other stakeholders' confidence in securities regulation.

- It is only once all five phases of the Project are completed that a comprehensive analysis can be done to ensure nothing has been missed and that nothing within the rules is contradictory. A concurrent rather than sequential implementation will also facilitate presenting changes to clients in a digestible manner, minimizing any client confusion. Moreover, the implementation will vary depending on the scope of changes, and a full view of the new requirements will enable firms to create solutions that provide the best experience for clients, and the best structure for ongoing supervision. In short, a concurrent implementation will allow the complete set of rules to arrive as a cohesive whole, and will maximize their impact in the market in a positive manner.

- The IT costs, in particular, of each phase cannot yet be quantified. However, to the extent that different phases require the same documents or the same processes to be updated, amended or modified numerous times, the magnitude of the cost will increase dramatically. For example, one member estimates the cost of updating documents with the new CIRO name and logo alone will cost seven figures. If those same documents must be updated and amended again as a result of any phase of the Project, a similar cost will be incurred again. Such duplicative costs are onerous and can be avoided by only requiring implementation once the Project is completed.

- There are a finite number of people in each dealer firm who can deal with the IT, compliance and operational implications of the Project, in addition to their other work. Their time and efforts must be deployed in the most efficient way possible; to do otherwise will increase, not decrease, regulatory burden.

- There is likely to be significant change management efforts required by dealers to implement the new rules, including training of staff, advisors and advisor teams.

The time for completing the review once all phases are complete, and subsequently for each dealer to make the necessary IT, operational and compliance changes and complete training in their firm, must be

reasonable and sufficient. While we cannot quantify the time needed for implementation this early in the Project, we will provide our suggested timing when the Project is substantially complete and prior to the implementation period beginning.

IMPROVING THE EFFICIENCY OF THE CONSULTATION PROCESS FOR ALL CIRO CONSULTATIONS

We suggest providing a minimum 90-day comment period for each subsequent phase of the Project and all other CIRO consultations.

Our concerns are founded in the importance of public input to the rule-making process and the difficulty for industry organizations, such as IFIC, which provide comments reflecting the consensus views of our members, to obtain and reflect those comments in a reduced time frame. IFIC gathers its members' comments through a committee process; the comments are then reflected in a draft comment letter, which is circulated to members of the committee struck for the purposes of reviewing the consultation, as well as to appropriate working groups and committees of the Board of Directors for their approval.

The time required to have meaningful committee discussions, gather comments and formulate a response which represents the feedback obtained from our members, who are doing this work in addition to their regular work commitments, is exacerbated by (i) the large number and diverse sizes of our members and their different current and evolving business models, (ii) the need for members to canvass and receive comments from multiple parts of their firms, such as operations, systems, behavioral economics, finance, legal, compliance and tax divisions, and (iii) the frequent need to receive comments from third-party service providers. Further, consultations have become longer and more complicated to assess and implement, with greater need to obtain operational and systems perspectives at the comment stage than was once required. The time challenges are further complicated when there are several overlapping rules published for consultation at the same time or when a consultation is published for comment over the summer, over holiday periods, or during particularly busy times for our members, such as year end and RRSP season.

We appreciate that our comments on the comment period were adopted for this Consultation and are appreciative of the 90-day comment period. We would note, however, that concurrently with the publication of this Consultation, CIRO has published for comment its *Proposed Integrated Fee Model*. This fee consultation has only a 60-day comment period and, when considered in conjunction with this Phase 3 Consultation, has resulted in significant challenges for our members to comment in a meaningful way. Thus, we urge CIRO to adopt a minimum 90-day consultation period for *all* consultations, not just consultations which are part of the Project We further encourage CIRO to have only one consultation underway at any one time.

CIRO GUIDANCE

IFIC members request that CIRO provide clarification about the CIRO guidance that will be used when the Project is complete, and the final DC Rules are in force. Currently, while the CIRO interim rules are in place (i.e. the Investment Dealer and Partially Consolidated Rules (**IDPC Rules**) and the Mutual Fund Dealer Rules (**MFD Rules**)), the Rules Guidance Notes remain effective as guidance for the IDPC Rules and the MFDA Staff Notices remain effective as guidance for the MFD Rules. There is uncertainty about what CIRO proposes to provide as industry guidance for the final DC Rules. IFIC recommends that CIRO also undertake a project, with public consultation, to make conforming changes to the existing interim guidance to create the guidance to be used for the final DC Rules. IFIC urges CIRO to not simply adopt the Rules Guidance Notes for the IDPC Rules (with only conforming changes to address definitions and terminology) as careful consideration should be given to guidance for the MFD Rules that should also be preserved. The guidance should be specifically tailored to the final DC Rules. The final DC Rules should not come into force until conforming consolidated guidance is finalized after public consultation.

BULK TRANSFERS

IFIC is supportive of the proposal to adopt the IDPC rules for account transfers and bulk account movements, with minor amendments. We urge CIRO to consider extending the rules to apply to bulk transfers between affiliates without requiring exemptive relief and without having to complete a business

change form. Such an extension will facilitate dual registrations without raising investor protections concerns. Indeed, facilitating the movement of clients will increase choice for clients and permit them to access advisers with increased proficiency, reflecting the policy rationale and benefits of dual registration.

SHARED OFFICE PREMISES

IFIC understands the importance of maintaining privacy and confidentiality as it relates to client accounts, but we are concerned about the impact, both from a practical client experience standpoint as well as in terms of the operational/regulatory costs and challenges of applying these pre-existing investment dealer rules to those firms currently operating under the Mutual Fund Dealer Rules (particularly where the firm employs approved persons who are dual-hatted (i.e. MFD approved person and bank employees being the same person). Our recommendations are as follows:

- IFIC is concerned with the addition made by the proposed DC Rule 2218(1), specifically the use of the words shared office premises must be "laid out and operated" in the manner prescribed for protection of client information confidentiality and privacy of client records and account process. We recommend removing the words "laid out and operated" as they may be subject to the interpretation that firms are expected to reconfigure their premises, which would not be realistic or practical, especially in the case of firms affiliated with financial institutions as they have approved persons who are dual-hatted (i.e. MFD approved person and bank employees being the same person).
- We also recommend removing the paragraph under proposed DC Rule 2218(4)(ii) restricting a Dealer Member from sharing client information with another entity in the shared office premises unless client consent is obtained by a signature or initial at the designated place. Given there is an extensive regime at both the federal and provincial level, and the continuing evolution of what constitutes consent, we believe CIRO should not add another prescriptive layer which may in time become inconsistent with applicable federal and provincial law. We think that the client consent requirement under the paragraph immediately above it (i.e. 2218(4)(i)) is adequate and provides the necessary client information confidentiality and disclosure consent.
- We also recommend removing proposed DC Rule 2218(5) which is not practical and overly prescriptive. Consideration needs to be given to operationalizing this requirement for dual-hatted employees of a financial institution (i.e. MFD approved person and bank employees being the same person).

BUSINESS CONTINUITY PLAN

IFIC members do not oppose the adoption of the IDPC rules regarding business continuity plans (**BCP**) for mutual fund dealers, noting that the consultation explains the MFDA has previously provided guidance to dealers to implement an appropriate BCP consistent with the IDPC Rules. However, we are concerned about there being an expectation of a "one size for all" BCP for all Dealer Members, regardless the business model. We recommend adding wording that recognizes an appropriate BCP may be proportionate to the business model and risk in the nature of the business and types of products utilized (please see Guiding Principle 5).

SANCTIONS

(1) *$10 million fine limit*. IFIC's members strongly disagree with the proposal to increase the maximum fine a CIRO hearing panel can impose to $10 million per offence from the current $5 million under both the existing IDPC Rules and the MFD Rules. The consultation provides little to no policy rationale for such a large increase. No market failures that would justify such an increase have been identified. If such market failures have been identified, they have not been disclosed with alternative potential remedial actions identified. Such an increase should be subject to further consultation and rigorous policy analysis as to the need for the increase and procedural protections. We note that agreeing to a payment in a settlement hearing, which is negotiated, is substantially different from having such an amount imposed unilaterally. We do not agree that a $10 million maximum fine would have double the deterrent value of a $5 million maximum fine. We are concerned that this increase does not reflect the purpose of the CIRO sanction principles[1] which is

[1] https://www.ciro.ca/rules-and-enforcement/enforcement/sanction-guidelines

to achieve specific and general deterrence, with consideration given to ensuring the sanctions are proportionate, and similar sanctions should be imposed for similar contraventions in similar circumstances. Given these principles, the consultation does not provide evidence that historical trends support a need to impose a fine above $5 million. In the ordinary course, we would expect that CIRO compliance exams should be able to help detect serious or systemic conduct issues, therefore would obviate the need for a sanction above $5 million. Also, we are concerned that a $10 million dollar sanction limit may have the effect of deterring new membership due to the lack of certainty as to what type of misconduct could attract a $10 million penalty.

(2) *Consistency in examinations and audits*. IFIC members support the proposal to adopt existing IDPC Rule provisions which have different sets of rules to govern enforcement examinations and compliance examinations. We agree that it is helpful to make clear that compliance examinations are aimed at regulatory compliance, rather than disciplinary matters.

IFIC members urge CIRO to ensure that now that the two previous SROs have come together in one SRO, that there is rigour and consistency in the standards that are applied in compliance examinations and in audits. In the past there has been a concern that the different SROs took different positions regarding regulatory compliance expectations for the same or similar regulatory requirements. Sometimes, there were even differences in expectations within the same SRO. We urge CIRO to take this opportunity to ensure that the same, standardized regulatory compliance expectations are applied to all members (please see Guiding Principle 6), while also ensuring the compliance expectations are proportionate to the business model and risk in the nature of the business and types of products utilized (please see Guiding Principle 5).

ARBITRATION

The Consultation proposes to require all Dealer Members (including mutual fund dealers) to participate in CIRO's current arbitration program. The Consultation further notes that in a separate project CIRO will propose changes to the current arbitration program.

IFIC members disagree with the proposal to require mutual fund dealers to participate in the CIRO arbitration program at this time. As we have noted in our suggestion for implementing the entire rule book at the same time, it is costly and inefficient to implement regulations in a piece meal fashion. If the proposal to require mutual fund dealers to participate in the current CIRO arbitration program is implemented, then mutual fund dealers will need to implement participation in that program in full knowledge that the program may be changed and the changes will need to be implemented subsequently. Further, the CSA is currently consulting about OBSI's independent dispute resolution service. In that consultation, we have urged the CSA to undertake a holistic analysis of all dispute resolution, arbitration and other complaint resolution solutions available to investors, including OBSI, CIRO's current arbitration program, and the AMF's dispute resolution regime, and make overall reforms to create a cohesive and harmonized regime for the investment sector in Canada. We urge CIRO to participate in such an analysis and, therefore, to delay the requirement for mutual fund dealers to participate in the CIRO arbitration process until the CSA/OBSI project is completed.

We note that currently clients of mutual fund dealers do not have access to an SRO-sponsored arbitration program and those registered in Quebec follow the AMF's dispute resolution regime. We believe it would be preferable to wait until a cohesive and harmonized approach to resolving client complaints and dispute resolution is implemented by the CSA, AMF, OBSI and CIRO.

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CONCLUSION

IFIC is pleased to have had this opportunity to provide our comments on the Consultation. Please feel free to contact me by email at amitchell@ific.ca. I would be pleased to provide further information or answer any questions you may have.

Yours sincerely,

THE INVESTMENT FUNDS INSTITUTE OF CANADA

By: Andy Mitchell
President & CEO

cc: Market Regulation, Ontario Securities Commission
(marketregulation@osc.gov.on.ca)

Capital Markets Regulation, B.C. Securities Commission
(CMRdistributionofSROdocuments@bcsc.bc.ca)

APPENDIX A

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? **IFIC Response:** Please see our discussion in the comment letter. IFIC strongly supports republication of the proposed rules as an entire rulebook prior to their approval.
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? **IFIC Response:** Please see our discussion in the comment letter. IFIC strongly supports implementing the entire set of rules at the same time. It is too early in the process to be able to yet determine the length of time which will be required prior to implementation. In addition, before the final DC Rules come into force, CIRO should undertake a project, by public consultation, to create conforming guidance that consolidates the existing guidance for the IDPC Rules and MFD Rules, as appropriate to the final DC Rules. Please see our discussion in the comment letter about this.
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.
IFIC Response: IFIC members do not agree with the proposal to require cross-guarantees between Dealer Members and their related companies. It is an unfair burden. They should be treated the same as unrelated dealers. Each registrant is regulated from a prudential standpoint and therefore, there is no reason that one regulated entity should back the financial obligations of another.

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.

IFIC Response:

IFIC members suggest that the requirement (discussed in the first bullet) to include a link to the CIRO website on account statements should be optional for registrants. This requirement is not material to investors yet negatively impacts those dually registered firms that have put or are putting in place the current account statement requirements (i.e. no link to the CIRO website required for investment dealers). They will later have to update and amend their account statements again after the final DC Rules are implemented. In our comment letter, we pointed out there are significant costs to registrants if the same documents must be updated and amended more than once during the Project implementation and that such duplicative costs should be avoided.

IFIC members suggest that the requirement (discussed in the third bullet) to provide the CIRO official brochure to clients at account opening or on request should instead be to make the brochure "available" at account opening or upon request (i.e. allowing delivery electronically, including via a link). We think this change is practical and reasonable by allowing an agnostic and technologically friendly approach to the requirement; removing the potential interpretation for a paper delivery obligation which is an unnecessary for investors and an unduly costly burden for registrants. [**Note**: We also point out that the third bullet incorrectly summarizes the existing requirement for all dealer members which is to provide the CIRO official brochure to new retail clients at the time of account opening and to existing clients upon request.]

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?

IFIC Response:

We agree with this assessment.

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?

IFIC Response:

N/A

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?

IFIC Response:

Please see our comment letter. We strongly disagree with increasing the fine limit, as discussed in the body of our letter.

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?

IFIC Response:

We are concerned that the proposed expanded restrictions do not take into consideration employment law obligations. IFIC members urge CIRO to obtain clarification on the employment law considerations before proceeding with the proposed expanded restrictions. We are of the view that challenges may arise from an employment law perspective as compensation may still be payable pursuant to the individual's employment contract. We also note that the exemptions in 8210(8) may be too narrow. For example, there may be situations where there is accrued pay owing to an individual who may be sanctioned (if, for example, the sanction comes before employment is terminated as a result of the misconduct). It would be beneficial if CIRO can provide examples of what type of payments are not permissible to be paid to sanctioned individuals.