

FAIR

Canadian Foundation *for*
Advancement *of* Investor Rights
Fondation canadienne *pour* l'avancement
des droits *des* investisseurs

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Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Superintendent of Securities, Nunavut
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Ontario Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

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CSA Position Paper 25-404 - New Self-Regulatory Organization Framework

FAIR Canada is pleased to provide our comments and recommendations on CSA Position Paper 25-404 - *New Self-Regulatory Organization Framework* (Position Paper).

FAIR Canada is a national, independent charitable organization dedicated to being a catalyst for advancing investor' rights in Canada. As a voice of the Canadian investor and financial consumer, FAIR Canada promotes its mission through outreach and education on public policy

issues, policy submissions to governments and regulators, and proactive identification of emerging issues.¹

Putting Investors and the Public Interest First

We agree with, and endorse, the 14 areas identified in the Position Paper that need to be addressed and solved. If the solutions are designed and implemented with a commitment to comprehensive reforms, including that a public interest focused culture takes root, the CSA have the potential to improve investor outcomes and increase public confidence.

We also support the decision to forego a straight merger of IIROC and the MFDA in favour of a thorough review and enhanced SRO. This is the time to address fundamental concerns with the current SRO structure and provide meaningful solutions. For example, by establishing a stronger governance structure that delivers on the organization's public interest mandate. Or creating new practices that support a full consideration of investor perspectives in SRO policy making and enforcement priorities. Or, equipping the new SRO so that it regularly collects in-depth data at the firm, account, and client level to support priority setting and decision-making.

Also welcome are the proposed enhancements to strengthen SRO oversight by the CSA. To ensure success of this oversight, it will be important for the program to include a formal periodic assessment of whether the new SRO is meeting its public interest mandate.

In addition, the planned new Investor Office, dedicated to enhancing investor education and reducing investor confusion, should prove helpful, especially regarding the complaints process.

Finally, to achieve real change, it will be essential to set the right tone at the top of the new organization. This will be important to ensure that staff of the new organization, as well as its many external stakeholders, see a fundamental change in the SRO's culture and its approach to its public interest mandate.

Creating a new SRO structure is something we will be living with for many decades. As such, those responsible for establishing the new structure should not race towards arbitrary deadlines, but rather focus on meaningful change and improvements to the current system.

¹ Visit www.faircanada.ca for more information.

SRO Enforcement Programs

A key area of necessary reform concerns the existing SRO enforcement programs. Although the Position Paper references a small number of specific solutions being considered, additional solutions and detail are needed. Enforcement-related issues that should be specifically addressed include:

- **Firm Supervision:** The current SRO enforcement approach has rarely involved taking action against firms or senior management for failure to supervise their employees. While the Position Paper calls for increased public transparency in enforcement notices regarding assessments of firm supervision, there is no statement reflecting the CSA position on the historic lack of enforcement action against firms or senior management and the need for the new SRO to be more proactive in addressing supervision issues.
- **Investor Compensation:** Although the Position Paper references the ongoing IIROC initiative to obtain enhanced enforcement and investor compensation powers, the specific solutions being considered by the CSA are not mentioned. The CSA should ensure the new SRO's enforcement program prioritizes investor compensation for losses incurred due to rule violations.
- **Fair Outcomes vs. Technical Compliance:** SRO compliance programs tend to focus on technical compliance with rules rather than achieving fair outcomes for clients. As part of compliance or other reviews, SROs should document findings where client outcomes do not meet public interest expectations, despite having technically complied with the rules. A prime example is the recent unfortunate decision of several large Canadian banks to limit availability of third-party mutual funds in response to the Client Focused Reforms. While technical compliance is important, ensuring that firms' compliance practices consistently deliver fair outcomes must not be overlooked.

In our view, the full scope of enforcement-related solutions being considered by the CSA needs to be clearly articulated and subject to stakeholder review.

Next Steps

As noted in the Position Paper, active stakeholder participation will be important for successful implementation. The Paper indicates that this will be obtained by consulting stakeholders "as required". We strongly believe that the better approach would be to include stakeholder representation on the Integrated Working Committee. This will enable stakeholder participation in the initial stages of the design of the solutions, resulting in outcomes that better reflect stakeholder concerns. Moreover, implementation of key reforms should include publication of formal proposals accompanied by requests for public comment.

We thank the CSA for the opportunity to provide our comments in this submission. We would be pleased to discuss our submission with the CSA should you have questions or require further explanation of our views on these matters. Please contact me at [REDACTED].

Sincerely,



Jean-Paul Bureaud,
Executive Director
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