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October 23, 2020

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
Nunavut Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Ontario Securities Commission
Superintendent of Securities, Department of Justice and Safety, Prince Edward Island

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8

Me Philippe Lebel, Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1

Re: Canadian Securities Administrators (CSA) Consultation Paper 25-402 – Consultation on the Self-Regulatory Organization Framework

We are writing on behalf of ATB Securities Inc. (ATB Wealth) and ATB Capital Markets Inc. with respect to the CSA consultation paper published on June 25, 2020 seeking input on the regulatory framework for self-regulatory organizations (SROs) in Canada.

Background on ATB Securities Inc. and ATB Capital Markets Inc.

IIROC Dealer Members ATB Securities Inc. and ATB Capital Markets Inc. are wholly-owned subsidiaries of ATB Financial. ATB Financial is a Crown corporation owned by the Province of Alberta.

ATB Securities Inc. operates under the trade name ATB Wealth with two other subsidiaries: ATB Investment Management Inc. (registered in the categories of Adviser - Portfolio Manager and Investment Fund Manager with the Alberta Securities Commission) and ATB Insurance Advisors Inc. ATB Securities Inc. ATB Securities Inc. had approximately $14.7 billion in assets under administration as of March 31, 2020.

ATB Capital Markets Inc. is a full service brokerage firm providing corporate financial services, equity underwriting, corporate and asset advisory, institutional research and sales and trading services.

General Comments

We commend the CSA for tackling the complex topic of the regulatory framework for registrants in Canada. The Canadian approach to securities regulation has tendencies towards fragmentation, and nowhere is that more evident than in a framework that includes two SROs and thirteen CSA jurisdictions that collectively oversee the activities of firms and individuals across several registration categories.

While the initial inclination might be to look at the impact of lessening regulatory fragmentation on firm costs and profits, we believe that the client lens is far more important in measuring the potential benefits of changes to the regulatory framework. A theme that weaves through our comments below is that the concept of investor protection (predominantly through compliance and enforcement) needs to be expanded to consider how regulatory change could improve client and investor outcomes in an industry that - finally - recognizes the importance of advice over product.

Issues & Consultation Questions

Issue 1: Duplicative Operating Costs for Dual Platform Dealers

We are in agreement with the description of the issue as described in the consultation paper. However, we would note that this issue of duplicative costs is limited to a minority of firms and suggest that cost to those firms who elect to be dual platform should not be the dominant factor driving change to the SRO environment in Canada.

ATB Financial previously maintained an MFDA dealer as a complement to ATB Securities Inc. but the operations were consolidated in the Dealer Member several years ago in order to reduce the cost burden of operating under two regulatory regimes and simplify the operating model. We would

note that the transition of clients from the mutual fund dealer to the Dealer Member was not, itself, without cost or complexity but we believe that overall the objective of managing our operations and compliance costs was met.

ATB Securities Inc. and ATB Investment Management Inc. also experience similar duplicative operating costs, albeit between an SRO member and a firm directly regulated by the CSA. Our Private Investment Counsel (portfolio management) offering exists in the ASC-regulated environment and there is regular transitioning of clients between the discretionary segment and non-discretionary segment in the Dealer Member which requires re-papering of accounts. We have also found that, as described in the consultation paper, there are significant and largely insurmountable challenges in consolidating compliance and operating environments while still meeting or exceeding regulatory obligations.

We generally agree with the outcome as described in the paper. However, we suggest that the CSA also acknowledge that reducing costs to registrants is a desirable outcome that complements enhancing regulatory value. Financial stability of registrants not only ensures that clients continue to receive the service they deserve, but promotes investment investment in compliance.

Issue 2: Product-based Regulation

The consultation paper appears to capture the salient issues regarding product-based regulation, but perhaps does not emphasize enough the extent to which convergence is impacting the financial services industry.

Changed client behaviour, continued expansion of the population of active investors, and digitization has made it far more difficult to draw lines between products and service offerings. As a result, we believe that product-based regulation is becoming anachronistic in an industry that is also slowly shifting away from a transactional, “selling” model to one that favours advice appropriately targeted to the needs of clients.

Regulatory arbitrage is a consideration, but we note that arbitrage opportunities - or at least differences in interpretation - exist between CSA jurisdictions currently, not just between SROs, or between SROs and the CSA. One of the advantages we have as Dealer Members in working with IIROC is that we generally have confidence in a consistent viewpoint on compliance issues; we appreciate the regular acknowledgement of consultation with other offices to help ensure consistency. Unless or until there is a structure in place that ensures consistency in application of regulations applied by CSA members, strengthening the already-national SRO approach would appear to be a more effective approach to reducing regulatory arbitrage.

Issue 3: Regulatory Inefficiencies

We generally agree with the views in the paper. However, while the paper appears to acknowledge that the existing regulatory framework may cause inefficiencies amongst CSA members and the SROs, it does not address the impact regulatory inefficiencies has on registrants outside of the ETF product issue described in the paper.

We have not directly experienced differences in interpretation of regulations between our IIROC Dealer Member and direct CSA-regulated firms, largely because we have deliberately avoided a crossover of services such as allowing discretionary management in both platforms. To date, we have elected to avoid building parallel discretionary management platforms and compliance regimes to avoid the complexity of understanding and implementing two regulator's views of the compliance requirements associated with services that would be virtually identical.

As a result, advisors who "graduate" to a portfolio manager need to change firms (and potentially meet different interpretations of required investment management experience) and either leave their clients behind or repaper them as new accounts. Similarly, clients of the Dealer Member whose emerging needs fit better with discretionary management need to move to a different firm and advisor.

There may be no merit to a view that the CSA and IIROC would differ meaningfully in terms of this example or others. But, given the significant investment required to launch a new service we are not willing to take that risk at this time. To some extent, this circumstance is the opposite of regulatory arbitrage: rather than taking advantage of how different regulators apply the rules, we are avoiding changes to our business model because we are unclear that the difference in interpretation between regulators are not material.

Ultimately, regulatory inefficiency cannot lead to better compliance and investor protection. While the CSA should continue to develop the regulations, fewer - and clearer - interpretations support development of effective compliance regimes.

Issue 4: Structural Inflexibility

We think that the consultation paper has comprehensively described the impact of the current regulatory framework from a structural inflexibility perspective. We have touched on this briefly in respect of the first three issues identified in the paper, so would focus our comments here on the impact to clients whose interests need to be served first.

As noted in Issue 2, the current regulatory framework (particularly dual SROs) promotes a very product-focused approach. New clients - with fewer investable assets and less investing experience

- often start their investing journey by purchasing mutual funds through a mutual fund dealer. As time passes and assets grow, clients often transition to or add different investments to their portfolio which requires acquiring the services of an investment dealer or even a portfolio manager.

What is notable about this journey is that clients typically get advice at each stage only based on the products that the registrant with whom they are dealing might be able to offer. There is a built-in inhibition to recommending an investment strategy that includes securities that an advisor may not offer or may not be seen as core to the business of the firm. We feel that this does not serve clients well.

We are of the view that the industry is evolving to a model where clients receive advice first, and product second. There are many order-execution-only platforms available that allow clients to quickly and cheaply transact, so the differentiator for the advised platforms must be actual advice that matches product recommendations fully and completely to client circumstances. The current regulatory framework not only makes this challenging at the outset as early investors are funnelled into a highly limited product shelf environment, but it creates friction - cost and effort to move or open a new account with an advisor with broader product capabilities - that might prevent a client from seeking advice more relevant to their circumstances.

We would note that an IIROC Dealer Member can be appropriately structured so that the advice-delivery model and product strategy can be aligned to a broad range of client expectations and points in a client's investing lifecycle. This includes developing mechanisms to deliver advice either in or for rural areas that is not restricted by regulation (even if business rules and compliance oversight is applied to manage risk). If this can be successful, it begs the question: what is the purpose of maintaining a separate registration category of mutual fund dealer, and an SRO to oversee it?

Finally, while we agree generally with the outcome as described we believe that the concept "protecting investors" requires expansion. The notion of protecting investors is often used to imply that investors need to be protected from the firms and advisors with whom they are dealing. We would encourage the CSA to consider that protecting investors also should be inclusive of supporting the provision of quality advice to investors that is not driven by registration to sell a particular product.

Issue 5: Investor Confusion

We agree that investor confusion is an outcome of the fragmented regulatory framework, and believe that the paper identifies many of the relevant issues. Investor confusion is a significant detractor from trust in both the regulatory system and in the firm so we agree that addressing this issue is important.

The regulatory framework encountered by firms and clients is complex which makes "easily understandable" a challenging goal. Core regulatory principles are developed by the CRA as well as other regulators (FINTRAC, CRA, etc.), then re-interpreted into rules by an SRO, re-interpreted again and implemented as operational and compliance practices by each firm, and finally manifested as a package of new account and disclosure documents given to a client.

Even if clear as to their meaning, disclosure documents that address complaint handling or investor protection funds are unlikely to be a main point of focus for a client at the outset of the relationship with the firm or advisor. It is not that the disclosures are ignored, but these items only become relevant when there is a significant issue and it is highly likely that trust has broken down between the client and the advisor and / or firm. At that point, a firm is no longer in a position to educate the client.

CSA jurisdictions along with the SROs have done some work to educate investors, or at least ensure that clients are made aware of who the relevant regulator is and where they may be contacted. While changing the structure of the industry through SRO consolidation would certainly reduce some investor confusion, we would encourage both the CSA and SROs to expand outreach to investors to continue to reduce any investor confusion.

Issue 6: Public Confidence in the Regulatory Framework

We fully agree with the desirable outcome as described in the paper. However, while we understand the concerns about the public interest mandate and potential conflicts of interest and governance issues, we have not observed actual instances of the concerns raised as Dealer Members with IIROC.

We have found that the frequency and quality of trading, financial and operations and business conduct compliance examinations by IIROC are more than sufficient to create the perception that we are heavily regulated by the SRO. Investor complaints, even ones we thought to be somewhat spurious, were addressed with diligence by IIROC.
We believe that investor protection can be achieved without making a firm feel that it is the next enforcement case in the queue for the regulator. SROs should have very fulsome enforcement capabilities, but as much as they should focus on punishing wrongdoers they should be equally promoting practices that truly support existing and emerging needs of investors.

We believe that IIROC may appear to be captured by its Dealer Members in that it interacts with them frequently through the Board, District Councils and other formal mechanisms, and through one-on-one conversations. However, we feel that the ability to interact with IIROC is a strength of the SRO model in that those conversations can ultimately lead to effective implementation of rules which is clearly in the public interest.

As a Dealer Member we appreciate that IIROC considers the financial stability and the business realities facing firms in its rulemaking and application of a risk-based approach to regulation. We feel that IIROC recognizes that the strength of its members is a public interest consideration. Not only do strong firms grow and invest in new ways to meet clients needs, but they also have the means to invest in compliance regimes designed to protect investors; weak firms underinvest in compliance, and ultimately put clients at risk.

Finally, we would note that the strength of the SRO is critical in it being able to meet its public interest mandate. Like the firms it regulates, a strong SRO can invest in compliance and enforcement resources, and take a significant role in educating investors. Accordingly, we feel that SRO consolidation may have the strongest positive impact if it takes advantage of increased scale to increase activities that align closely to the public interest outcome.

Issue 7: The Separation of Market Surveillance from Statutory Regulators (CSA)

ATB Capital Markets has serious concerns with the MFDA's proposal to have the CSA assume control over the national market surveillance functions. In our view, we believe that IIROC has the expertise and knowledge under the current regulatory framework. In the event that the statutory regulators took over this function, we feel that it would be detrimental to the current functioning and integrity of the marketplace. This change would add significant costs and resources to realign a system that currently meets the mandate of protecting investors and strengthening market integrity while maintaining an efficient and competitive capital markets structure.

Further to the stakeholders' concerns about possible information gaps and fragmented market visibility resulting from market surveillance functions being separated from securities regulators, we disagree with the concern. We feel that the market surveillance and oversight of equity and debt trading under IIROC's purview is functioning well with the advantages of real-time equity and debt market surveillance and the use of real-time alerts. We believe that IIROC is currently doing a great job at protecting investors and strengthening confidence in the integrity of Canadian debt and equity markets under the UMIR Framework. It is our belief that IIROC has the required specialized industry expertise to continue the appropriate oversight of market surveillance.

Based on the foregoing, we disagree with the proposal that the current framework for market surveillance conducted by IIROC gives rise to conflicts of interest, information gaps or a fragmented market visibility. We disagree with the stakeholders who suggested that these conflicts of interest, information gaps or a fragmented market visibility would give rise to market vulnerability and increased systemic risk. The consultation paper denotes that the targeted outcome is an integrated regulatory framework that fosters timely, efficient access to market data and effective market surveillance. Further to our comments, we believe that IIROC already provides a timely, efficient access to market data and effective market surveillance with the existing real-time surveillance and alerts.

Summary

In closing, we believe that the CSA has largely identified the most important issues with the regulatory framework and the desired outcomes. On balance, we are of the view that there is a case for change to consolidate the SROs in order to reduce regulatory inefficiencies, reduce investor confusions, and create a strong, single SRO that is suitably armed to meet its public interest obligations. We are of the opinion that the SRO model has proven its value to firms and investors and feel that further development of the SRO structure is an important next step in strengthening securities regulation in Canada.

We appreciate the opportunity to provide you with our comments on the CSA Notice and Request for Comment. We look forward to our continued participation in any further consultation on this topic and would be pleased to discuss our input in greater detail with you. Should you have any questions or wish to discuss these comments, please contact the undersigned.

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