

October 23, 2020

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

Care of:

The Secretary
Ontario Securities Commission
20 Queen Street West 22nd Floor
Toronto, Ontario M5H 3S8
comments@osc.gov.on.ca

M^e 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 City, Québec G1V 5C1
consultation-en-cours@lautorite.qc.ca

SENT VIA EMAIL

Dear Sirs/Mesdames:

**Re: Canadian Securities Administrators Consultation Paper 25-402
*Consultation on the Self-Regulatory Organization Framework***

On behalf of Advocis, The Financial Advisors Association of Canada, we are pleased to provide our comments on the Canadian Securities Administrators' (CSA) Consultation Paper 25-402, *Consultation on the Self-Regulatory Organization (SRO) Framework*.



1. ABOUT ADVOCIS

Advocis is the association of choice for financial advisors and planners. With more than 13,000 members across the country, Advocis is the definitive voice of the profession, advocating for professionalism and consumer protection. Our members are provincially licensed to sell life, health and accident and sickness insurance, as well as by provincial securities commissions as registrants for the sale of mutual funds or other securities. Members of Advocis are primarily owners and operators of their own small businesses, creating thousands of jobs across Canada. Advocis members provide advice in several key areas, including estate and retirement planning, wealth management, tax planning, employee benefits, life insurance, critical illness and disability insurance.

Professional financial advisors and planners are critical to the ongoing success of the economy, helping consumers to make sound financial decisions that ultimately lead to greater financial stability and independence both for the consumer and the country. No one spends more time with consumers than advisors and planners, educating them about financial matters and helping them to reach their financial goals. Advocis works with decision-makers and the public, stressing the value of financial advice and striving for an environment in which all Canadians have access to the advice they need.

2. OUR COMMENTS

EXECUTIVE SUMMARY

Advocis applauds the CSA for launching this initial review of the SRO framework. We feel that a move towards a consolidated SRO is necessary and long overdue. With increasing pressures of globalization, digitization and emerging systemic risks including COVID-19 and the recent financial downturn, we feel that Canadian investors deserve a regulatory framework that is responsive, flexible, and proportionate.

In our view, the current focus on product-based regulation is a barrier to innovation, effective investor protection, and the accessibility of financial advice for all Canadians. While a consolidated SRO only mitigates some issues stemming from this product-focused approach, we feel that it offers an opportunity to meaningfully level the playing field for industry and will lead to opportunities for investors that align better with their financial needs and goals.

Reviewing the stakeholder comments and proposals from both IIROC and the MFDA, we feel that the need for a consolidated SRO is evident. We encourage the CSA to act with urgency, and implement a single SRO that can respond effectively to the changing needs of Canadian businesses and investors.



1. DUPLICATIVE OPERATING COSTS FOR DUAL PLATFORM DEALERS

Question 1.1: *What is your view on the issue of duplicative operating costs, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.*

In addressing the question above, please consider and respond to the following, as applicable:

- a) Describe instances whereby the current regulatory framework has contributed to duplicative costs for dealer members and increased the cost of services to clients.*
- b) Describe instances whereby those duplicative costs are necessary and warranted.*
- c) How have changes in client preferences and dealer business models impacted the operating costs of dealer member firms?*

Response:

The stakeholder comments reflect the feedback that Advocis has received from our membership regarding costs for dual platform dealers. Dual platform dealers seek the flexibility to meet the evolving needs of their clients within a single firm. We support efforts to enhance consumer choice in this manner and believe that the current system is unnecessarily complex and cost-prohibitive.

We would expect that a consolidated SRO would be better equipped to regulate and develop a fee structure based on the risk of a given product or practice. This would eliminate the need for maintaining the current IIROC upgrade requirement and allow members to create business structures that reflect their internal resources, expertise, and the needs of their communities.

While Advocis would like to see a regulatory framework that accommodates dealers seeking to expand their service offerings in the securities and mutual fund sectors, we understand that this approach may not make business sense for all members. A consolidated, modern SRO should be mindful of the cost and resources required for regulatory compliance, and should ensure that the system does not favour larger dealers, including those with the significant backing of large financial institutions.

In our view, it is critical to promote a regulatory framework where cost is proportionate to size, risk and the need for regulatory intervention. We would hope that any fee structure developed by a consolidated regulator would maintain cost-effective fee solutions for smaller,



independent mutual fund dealers that provide service to Canadians living and investing outside of city centres.

Question 1.2: *Is the CSA targeted outcome for issue 1 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?*

Targeted Outcome for Consideration: *A regulatory framework that minimizes redundancies that do not provide corresponding regulatory value.*

Response:

In our view, the targeted outcome should also reflect a regulatory framework that is sensitive to the needs of an inclusive, competitive market, including the needs of smaller dealers.

2. PRODUCT-BASED REGULATION

Question 2.1: *What is your view on the issue of product-based regulation, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.*

In addressing the question above, please consider and respond to the following, as applicable:

- a) Are there advantages and/or disadvantages associated with distributing similar products (e.g. mutual funds) and services (e.g. discretionary portfolio management) to clients across multiple registration categories?*
- b) Are there advantages and/or disadvantages associated with representatives being able to access different registration categories to service clients with similar products and services?*
- c) What role should the types of products distributed and a representative's proficiency have in setting registration categories?*
- d) How has the current regulatory framework, including registration categories contributed to opportunities for regulatory arbitrage?*

Response:

In our view, existing regulation focuses on products, at the expense of proper regulatory oversight of the most critical retail financial relationship — the ongoing relationship between



financial advisors and their clients. The current product-based framework does not reflect modern advice-giving or the way that modern consumers see their advisors, or access financial advice, today.

While existing regulators may be adept at regulating their member dealers or brokers, including regulating the constant product innovation in the industry, they do not have a collective focus on the retail consumer's overall advisory experience. Many advisors hold multiple licenses which allow them to provide consumers with risk management and wealth solutions from across not only mutual fund and securities sectors, but also the insurance sector.

As a practical matter, most consumers do not conceive of the retail financial services industry as structured in such rigid "silos." Nor should they be expected to understand the legal rules and regulatory processes which have produced this model. Consumers often have no sense of when their advisor is wearing their mutual funds hat vs. an insurance/segregated funds hat; not only should consumers not be expected to understand these distinctions, they should be able to expect comparable treatment and protections regardless of which products their advisor recommends.

In the current regulatory framework which is predicated on product sales, it is often the case that the advisor-client relationship is not governed by a single regulatory entity, but by a combination of them. The result is that the protections which consumers do receive vary widely, as they are based on the sector from which the product originates. We have seen the importance of this distinction coming to light if problems arise, leaving consumers confused and disappointed.

It is our opinion that reducing the number of SROs is a step towards a regulatory regime that is more aligned with consumer needs and expectations. Advocis also encourages the CSA to evaluate whether other registration categories such as Exempt Market Dealers (EMDs), Portfolio Managers (PMs) and Scholarship Plan Dealers (SPDs) can also be appropriately included in the regulatory jurisdiction of a single SRO. In our view, this is particularly appropriate from a consumer-focused perspective. In particular, retail customers should be able to expect that securities professionals are held to similar standards and share points of contact for any questions of qualifications, disciplinary actions, or other issues. This consumer-focused perspective should be central to the creation of a new SRO framework.

Consolidating registration categories under the banner of a single SRO facilitates a consumer-focused approach that would reduce regulatory arbitrage, limit investor confusion, and would better reflect how Canadians seek financial advice and make product purchasing decisions. However, while consolidation would be beneficial, arbitrage opportunities still remain between the securities and insurance sector.



In our view, while a single securities SRO would mitigate the risks, challenges and arbitrage opportunities inherent in a product-focused regulatory framework, it is ultimately necessary to modernize financial services regulation by professionalizing financial advice. We encourage CSA members to lend their support to initiatives to protect the titles of “financial advisor” and “financial planner”, like those currently proceeding in the provinces of Ontario and Saskatchewan. We also invite CSA members to again consider our Professions Model,¹ which outlines a path to relationship-focused regulation that would ultimately reflect the needs and expectations of consumers while reducing regulatory arbitrage and holistically address risks, concerns and bad actors within the industry.

Question 2.2: *Is the CSA targeted outcome for issue 2 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?*

Targeted Outcome for Consideration: *A regulatory framework that minimizes opportunities for regulatory arbitrage, including the consistent development and application of rules.*

Response:

We recommend that the regulatory framework also focus on aligning with the consumer’s perspective, including how modern consumers access financial advice and products, and their reasonable expectations from a financial services regulator.

3. REGULATORY INEFFICIENCIES

Question 3.1: *What is your view on the issue of regulatory inefficiencies and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.*

In addressing the question above, please consider and respond to the following, as applicable:

- a) Describe which comparable rules, policies or requirements are interpreted differently between IIROC, the MFDA and/or CSA; and the resulting impact on business operations.*
- b) Describe regulatory barriers to the distribution of similar products (e.g. ETFs) available in multiple registration categories.*

¹ An overview of the Professions Model is included in pages 11-16 of our 2016 response to the CSA’s proposals re: NI 33-404, which can be found here: <https://www.advocis.ca/regulatory-affairs/RA-submissions/2016/160930-Advocis-Response-to-CSA-33-404-v5.pdf>



c) Describe any regulatory risks that make it difficult for any one regulator to identify or effectively resolve issues that span multiple registration categories.

Response:

The stakeholder comments on the issue of regulatory inefficiencies reflect the feedback that we have received from our members, especially in the category of mutual fund dealers. Our members have expressed concern with the differing approach to audits and compliance matters between SROs in various geographic regions, with some approaches requiring a more significant investment of time and resources than seems proportionate to the risk. Advocis Members have also expressed concern with the difference in fee structures between the MFDA and IIROC, especially given the restricted product offerings under the former.

That said, members licensed with the MFDA felt that the ability to incorporate and direct commissions was a valuable tool for addressing corporate structure and business needs. Especially in a time of disruption and industry change, we feel that the ability to incorporate affords advisors the flexibility necessary to innovate and create business models that align with consumer expectations. In our view, this option should be available regardless of product shelf.

Our members have also expressed concern that while consumer demand grows for products such as Exchange-Traded Funds (ETFs) and Platform-Traded Funds (PTFs), mutual fund dealers are not able to access these products in an efficient manner. Even where individual mutual fund representatives may be qualified to sell these products, the dealers are unable to trade or settle securities other than mutual funds under their current licensing category, and must navigate the structural separation between the MFDA and IIROC in order to access the clearing and settlement system through investment dealers.

In addition to placing mutual fund dealers at a competitive disadvantage, consumers also have difficulty accessing ETFs and PTFs which may be more cost-effective and aligned with their financial goals than more traditional mutual funds. Under a single SRO, we feel that advisors in the mutual fund space would be better equipped to offer their clients access to these products through introducing-carrying relationships, without creating otherwise unnecessary referral relationships or sacrificing the ability to book business in the client's name or re-direct commissions.

Clients would also be able to purchase ETFs more efficiently through the mutual fund channel, which offers enhanced access to personal financial advice than other ETF purchasing options, such as online platforms that do not provide access to fulsome financial advice. We believe that clients understand the value of advice, and in addition to granting clients access to a broader suite of lower cost products such as ETFs, facilitating these sales through the mutual fund channel also helps ensure that consumers receive the advice of trusted, qualified professionals.



Question 3.2: *Is the CSA targeted outcome for issue 3 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?*

Targeted Outcome for Consideration: *A regulatory framework that provides consistent access, where appropriate, to similar products and services for registrants and investors.*

Response:

The targeted outcome should include not just consistent access, but consistent obligations on registrant and consistent protections for consumers.

4. STRUCTURAL INFLEXIBILITY

Question 4.1: *What is your view on the issue of structural inflexibility, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.*

In addressing the question above, please consider and respond to the following, as applicable:

- a) How does the current regulatory framework either limit or facilitate the efficient evolution of business?*
- b) Describe instances of how the current regulatory framework limits dealer members' ability to utilize technological advancements, and how this has impacted the client experience.*
- c) Describe factors that limit investors' access to a broad range of products and services.*
- d) How can the regulatory framework support equal access to advice for all investors, including those in rural or underserved communities?*
- e) How have changes in client preferences impacted the business models of registrants that are required to comply with the current regulatory structure?*

Response:

Advocis echoes the stakeholder comments made with respect to structural inflexibility within the current regulatory framework.

Consolidation of SROs provides more flexibility to advisors, many of whom are small business owners seeking to serve retail clients with specific needs. In our view, greater flexibility to



expand product offerings through ongoing education and other means of developing proficiency is a net positive to clients. With a single SRO, we anticipate that financial advisors will be able to more responsively adapt to changes in the market and address the emerging needs of their clients.

Structural inflexibility also creates challenges for the evolution of technological solutions, from client relationship tools to compliance management. As a market, Canada is comparatively small compared to global tech hubs such as Silicon Valley and New York. Startups seeking to bring FinTech products to the Canadian market face challenges in creating profitable products that comply with the complex and sometimes overlapping regulatory regimes in the financial services space. While larger dealers and other entities may have the resources to create technological solutions from scratch or adapt existing products to meet their needs, independent advisors and smaller dealers may not have the resources to fully access the advantages that technological innovation can offer their business.

While products such as robo-advisors offer some solutions, we believe that Canadians benefit from being able to meet with trained, qualified financial advisors who can make personal and holistic recommendations about how to reach their goals and maintain their financial health. It is our view that while SRO consolidation offers opportunities to encourage broader technological innovation, it will specifically encourage the development of back-office solutions and client-facing tools for advisors, freeing them to focus on what they do best – advising their clients. We believe that this is an important step towards evening the playing field for independent advisors, large dealers, and online platforms.

The new SRO should take a modern approach to directed commissions and advisor incorporation. Historically, advisors in the insurance sector have been allowed to incorporate, and more recently so too have advisors on the MFDA platform; to Advocis' knowledge, consumers have not been harmed as a result of this practice. Allowing financial advisors to incorporate in the securities sector would prove beneficial to advisors and consumers. Advisor incorporation provides the advantage of reducing administrative red tape for financial advisors, as well as enhancing their ability to plan for contingencies or succession in these uncertain times. Not allowing financial advisors to direct their commissions to their personal corporations makes little sense, especially in an environment in which most of them are dual-licensed to sell securities and insurance products.

In our view, enhancing the ability of advisors to adopt digital tools, enhance their proficiency and expand product offerings, and adjust their business structure through incorporation has a direct benefit for consumers. Advisors would be more able to be more directly responsive to the unique and evolving needs of their clients. Further, greater flexibility allows for greater innovation, especially where addressing rural and remote communities, as well as the needs of populations that have historically been underserved in the financial advice space.



Question 4.2: *Is the CSA targeted outcome for issue 4 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?*

Targeted Outcome for Consideration: *A flexible regulatory framework that accommodates innovation and adapts to change while protecting investors.*

Response:

We believe that this targeted outcome is described appropriately.

5. INVESTOR CONFUSION

Question 5.1: *What is your view on the issue of investor confusion, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.*

In addressing the question above, please consider and respond to the following, as applicable:

- a) What key elements in the current regulatory framework (i) mitigate and (ii) contribute to investor confusion?*
- b) Describe the difficulties clients face in easily navigating complaint resolution processes.*
- c) Describe instances where the current regulatory framework is unclear to investors about whether or not there is investor protection fund coverage.*

Response:

With continuous product innovation and convergence, it is increasingly difficult for consumers to see the differences between different financial products and unreasonable for industry and regulators to expect them to do so. Consumers come to financial professionals seeking to achieve certain financial objectives. They turn to financial advisors to recommend strategies to achieve these goals, including investment and risk management products. In our view, a modern SRO framework should reflect the consumer's view and align with their reasonable expectations.

In the current framework, securities regulators, the MFDA and IIROC are each empowered to impose a variety of sanctions, including the stripping from an advisor of his or her license or registration. However, the limitations of the existing product-based approach become most apparent when considering the gaps which open when one considers the practical impact of



having multiple regulatory authorities investigate and act on consumer complaints: each regulator's enforcement powers are limited to its respective sector.

While consolidating the SROs would reduce areas of confusion for investors, it would not fully resolve the complexity of the current regulatory framework. For example, the insurance industry will not fall under this umbrella, and even where conduct is so egregious that an advisor loses their registration or membership with the MFDA or IIROC, they can still continue to provide advice and sell similar products (such as segregated funds) through an insurance licence. This is an industry-wide concern that puts consumers at risk.

In our view, a more holistic and comprehensive approach to reducing investor confusion is required, especially where it pertains to identifying bad actors and protecting investors. Regulators should seek holistic solutions that simplify things for the investing public at all stages of the process, whether that is maintaining a single database of complaints and disciplinary actions across all regulators, sectors, and SROs or harmonizing the coverage by the Canadian Investor Protection Fund (CIPF) and the Investor Protection Corporation (IPC).

Although we support SRO consolidation and believe it will reduce some investor confusion, it is Advocis' position that any meaningful step towards an effective, comprehensive investor protection regime must include a shift from product-based regulation to one that focuses on the client-advisor relationship and is streamlined accordingly.

Ultimately, we feel that the regulatory framework should include a single point of contact for all consumer complaints regarding financial advisors, regardless of product sector. In our view, financial advisors should be overseen by a professional body that is empowered to act on the basis on the quality of that advice, across product sectors to protect the public interest. In addition to enhancing consumer protection, this would provide greater harmonization, reducing regulatory arbitrage and bureaucratic red-tape.

Question 5.2: *Is the CSA targeted outcome for issue 5 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?*

Targeted Outcome for Consideration: *A regulatory framework that is easily understood by investors and provides appropriate investor protection.*

Response:

We believe that this targeted outcome is described appropriately.



6. PUBLIC CONFIDENCE IN THE REGULATORY FRAMEWORK

Question 6.1: *What is your view on the issue of public confidence in the regulatory framework, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.*

In addressing the question above, please consider and respond to the following, as applicable:

- a) Describe changes that could improve public confidence in the regulatory framework.*
- b) Describe instances in the current regulatory framework whereby the public interest mandate is underserved.*
- c) Describe instances of how investor advocacy could be improved.*
- d) Describe instances of regulatory capture in the current regulatory framework.*
- e) Do you agree, or disagree, with the concerns expressed regarding SRO compliance and enforcement practices? Are there other concerns with these practices?*

Response:

Advocis is in favour of exploring ways to integrate investor protection more effectively into the governance fabric of a consolidated SRO. In particular, we support the formation of a committee focused on investor issues, and the inclusion of independent board members with demonstrated expertise and knowledge in investor advocacy and protection.

However, we also believe that for an SRO to operate effectively and efficiently, there needs to be an appropriate balance between CSA oversight and SRO independence. With a national SRO, regional issues may also play a role in effective governance, as well as enforcement and compliance matters.

We recommend that the CSA hold a separate consultation on governance structure once the CSA has decided on a direction regarding the overall SRO framework. In our view, this would also be a suitable step to ensure that investor advocacy and public interest concerns are appropriately incorporated in any revised SRO framework.

Question 6.2: *Is the CSA targeted outcome for issue 6 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?*



Targeted Outcome for Consideration: *A regulatory framework that promotes a clear, transparent public interest mandate with an effective governance structure and robust enforcement and compliance processes.*

Response:

We believe that this targeted outcome is described appropriately.

7. MARKET SURVEILLANCE

Question 7.1: *What is your view on the separation of market surveillance from statutory regulators, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.*

In addressing the question above, please consider and respond to the following, as applicable:

- a) Does the current regulatory structure facilitate timely, efficient and effective delivery of the market surveillance function? If so, how? If not, what are the concerns?*
- b) Does the continued performance of market surveillance functions by an SRO create regulatory gaps or compromise the ability of statutory regulators to manage systemic risk? Please explain.*

Response:

Advocis does not take a position on the role of an SRO with respect to market surveillance.

Question 7.2: *Is the CSA targeted outcome for issue 7 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?*

Targeted Outcome for Consideration: *An integrated regulatory framework that fosters timely, efficient access to market data and effective market surveillance, to ensure appropriate policy development, enforcement, and management of systemic risk*

Response:

We believe that this targeted outcome is described appropriately.



We look forward to working with the CSA as it continues to review the framework for SROs in the securities and mutual funds industries. Should you have any questions, please do not hesitate to contact the undersigned, or James Ryu, Senior Director, Legal and Regulatory Affairs at 416-342-9849 or jryu@advocis.ca.

Sincerely,



Greg Pollock, M.Ed., LL.M., C.Dir., CFP
President and CEO



Abe Toews, CFP, CLU, CH.F.C., CHS, ICD.D
Chair, National Board of Directors