



THE INVESTMENT  
FUNDS INSTITUTE  
OF CANADA

L'INSTITUT DES FONDS  
D'INVESTISSEMENT  
DU CANADA

# IFIC Submission

Re: *CSA Consultation Paper 25-402:  
Consultation on the Self-Regulatory  
Organization Framework*

October 23, 2020



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October 23, 2020

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Financial and Consumer Services Commission of New Brunswick  
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island  
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Dear Sirs and Mesdames:

**RE: CSA Consultation Paper 25-402: *Consultation on the Self-Regulatory Organization Framework***

The Investment Funds Institute of Canada (IFIC) appreciates the opportunity to comment on the Canadian Securities Administrators' (CSA) Consultation Paper 25-402 *Consultation on the Self-Regulatory Organization (SRO) Framework*. IFIC is the voice of Canada's investment funds industry. IFIC brings together 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. Of course, not all members hold identical views to those set out below.

The CSA consultation on the Canadian SRO framework underlines the importance of self-regulation for investors, market participants, regulators and governments. While membership in the Investment Industry

Regulatory Organization of Canada (**IIROC**) and the Mutual Fund Dealers Association of Canada (**MFDA**) is mandatory for investment dealers and mutual fund dealers, the SROs' authority to regulate their members according to their rules is derived from contracts between the members and their respective SROs. It is this characteristic of SRO membership that distinguishes IIROC and the MFDA from a statutory regulator. It is the view of IFIC members that, whatever the outcome of these consultations, the value that a member-driven SRO brings to the regulation and reputation of Canada's capital markets should not be lost.

As discussed in more detail below, IFIC believes that the benefits of self-regulation for investors and the industry could be significantly improved with the timely implementation of a single SRO for mutual fund and investment dealers.

In this letter, we provide our comments on aspects of the Consultation that raise high-level themes. Our detailed responses to certain of the questions posed by the Consultation are set out in Appendix A.

### **The Value of Self-Regulation**

IFIC members strongly support self-regulation for investment dealers and mutual fund dealers and their representatives because it provides cost effective dealer regulation and investor protection.

Self-regulation improves industry compliance. If the industry actively participates in the development of the rules that govern their behavior, the resulting rules are more likely to be understood and supported by the industry.

SROs can move more quickly than statutory regulators to address changes in rapidly-evolving markets. More current regulation is more effective regulation. Because SRO members are closer to the business activity being regulated, they bring greater expertise and experience to their regulatory duties. Furthermore, they can and have implemented higher standards for their members than the statutory minimums.

SROs are even more important in Canada because of our fragmented regulatory structure. National SROs bring a single set of rules and a national approach to compliance and enforcement. This national, harmonized approach would be lost if direct dealer regulation were divided among the thirteen provinces and territories.

Self-regulation, because it is self funded, demonstrates the industry's commitment to regulating in the public interest and spares the public purse from the not inconsiderable costs. In effect, this self-funding can supplement scarce public resources.

Furthermore, self-regulation has been recognized internationally as an effective means of regulation, particularly with effective ongoing oversight by statutory regulators as is the case in Canada. In "[Model for Effective Regulation](#)" (2000), IOSCO noted that self-regulation has proven to be effective regulation, where market participants with an intimate knowledge of markets, operations and technical matters know how to maximize regulatory benefits (e.g., orderly markets, investor protection, reduction of systemic risk), while minimizing unnecessary regulatory burden and the associated costs. It recognized that, as financial markets and products become more complex and as national and global markets become more interconnected, this specialized knowledge is particularly beneficial.

IOSCO re-affirmed its support for self-regulation in a May 2017 report, [Methodology for Assessing Implementation of IOSCO Objectives and Principles of Securities Regulation](#).

The CFA Institute, in "[Self-Regulation in the Securities Markets – Transitions and New Possibilities](#)" (August 2013), recognized that SROs can contribute to market innovation through their industry expertise. This expertise can encourage the development of "ahead-of-the-curve" regulations.

## The Importance of the “Self” in Self-Regulation

If self-regulation is to continue to have value, it is important not to lose sight of the “self” in self-regulation. This means that the SRO must continue to have some degree of independence from the provincial and territorial securities regulators. In 2008, the CSA reviewed the role of SROs in securities regulation in Canada to identify and analyze current issues relating to self-regulation. In a Discussion Paper prepared for the CSA consultation, “Current Issues in Self Regulation in Canadian Securities Markets”, John Carson noted that the concept of self-regulation requires that members have a significant degree of control and influence over the rules, policies and operations of the organization.

It is for this reason that IFIC members disagree with the Capital Markets Modernization Task Force Report proposals for:

- an OSC veto on any significant SRO guidance or rule interpretation;
- an OSC veto on key appointments, including the Chair and the President; and
- the appointment of up to half of the SRO directors jointly by all CSA regulators.

These proposals represent unwarranted interference with the mandate of the board of the SRO. Furthermore, CSA appointments to the SRO board would result in a significant conflict of interest for those board members appointed by the CSA. The result of these proposals would be a “private” or “third party” regulator, but not a self-regulator. The value of self-regulation would be significantly diminished or lost.

## A Single SRO for Investment Dealers and Mutual Fund Dealers

IFIC believes that a single SRO that regulates all retail-facing investment dealers and mutual fund dealers and their representatives would significantly improve the investor experience and investor outcomes. The key benefits are listed below:

- Investor ability to access a broad range of investment products and services without the need to change firms and open new accounts. This requirement, driven simply by the current SRO framework, frequently results in lost performance and account history, which in turn harms investment outcomes;
- Consistent “touch and feel” for investors, including consistent client forms and statements, account opening processes and disclosures;
- Plain and simple investor access to dealing representatives’ disciplinary records;
- Plain and simple investor access to the complaint resolution process, leading to better use of it;
- Easier access to a single investor protection fund to protect investors from loss due to firm insolvency; and
- Less overall investor confusion, particularly when an investor wishes to expand their investments from only mutual funds to include other securities, which could enhance clients’ confidence in the investment industry.

## Creation of a New SRO Through Consolidation of IIROC and the MFDA

To achieve this single SRO, IFIC supports the creation of a new SRO (**NewCo**) through the consolidation of IIROC and the MFDA. The new entity would require a reconstituted board and senior management. NewCo would incorporate the best dealer compliance and enforcement processes and programs from both IIROC and the MFDA. NewCo should have a forward-looking culture and a risk-based approach to achieving regulatory outcomes.

The new SRO could implement a program of regulation that is designed to protect investors and markets while minimizing the regulatory burden on industry by:

- establishing principles of regulation to focus dealers and dealing representatives on their

responsibilities to their clients and the markets;

- imposing requirements only to the extent they are necessary for the protection of investors and markets;
- designing regulatory requirements with the flexibility to accommodate a wide range of business models and client relationships; and
- employing a risk-based approach to the regulation of all investment products in a consistent and predictable manner.

While IFIC members believe that the best outcome of this consultation would be the creation of a new SRO through a consolidation of the MFDA and IIROC, if the creation of NewCo cannot be implemented in a reasonable time, or for any other reason cannot go forward, at least two alternative/interim measures should be considered to alleviate the immediate concerns that gave rise to this consultation.

The first is the IIROC proposal of November 2015. IIROC proposed that Rule 18.7 be rescinded, eliminating the requirement for a dealing representative to upgrade their proficiency by successfully completing the Canadian Securities Course and the Conduct and Practices Handbook Course within 270 days of being employed with an investment dealer. This change could be implemented quickly and with little cost. The result would be one SRO that has the jurisdiction and capability to regulate both the mutual fund dealer and investment dealer platforms.

Another option would be a take-over of the MFDA by IIROC. This could also be accomplished relatively quickly and with little cost through the addition of the MFDA staff and programs within IIROC as a separate dealer division. However, even if IIROC had the jurisdiction to regulate both platforms, there would still be two SROs. The benefits for investors stemming from a single SRO that we describe above could not be fully realized. In addition, the possible loss of revenue from MFDA firms that resigned from the MFDA to operate as single platform IIROC members could impair the financial viability of the MFDA. This could, in turn, create uncertainty for the industry and investors.

To be clear, IIFC is not recommending either of these alternatives. A swift implementation of NewCo would provide the best result for investors. It is for this reason that IFIC members recommend that the non-executive board members of each SRO take a leadership role in these consultations. With collaborative and willing partners, the chances of a successful outcome would be significantly enhanced.

A single SRO with complete national jurisdiction would be the best outcome, however the MFDA does not currently operate in all provinces and territories. Those provinces and territories where the MFDA does not operate will have to consider how their regulatory frameworks will effectively interact with NewCo.

### **Necessary Outcomes from a Restructuring of the SRO Framework**

In order for investors to achieve the benefits of a single SRO, the SRO must be structured in a way that accomplishes the following outcomes:

- Small independent mutual fund dealer and investment dealer registrants should continue to be viable. These small independent firms play a significant role both in capital raising for small and medium-sized business, and in maintaining access to investments and investment advice for modest clients and clients in small communities and/or remote locations;
- Mutual fund dealers that want to keep their existing business models should be able to do so without any unnecessary increase in their current regulatory burden (e.g. current proficiency and capital requirements) or SRO membership fees. This may be achieved through separate divisions or otherwise in a single SRO;
- A single SRO should enable advisors to transition seamlessly to offering a broader array of products and/or services to their clients.

## Including Other Market Participants in NewCo

IFIC members do not support the inclusion in NewCo of other categories of registration currently regulated directly by the CSA as a precondition to a consolidation of IIROC and the MFDA. The time and complexity involved in such an undertaking would be orders of magnitude greater than the consolidation of two existing SROs. In our view, this would create an unacceptable delay.

A necessary pre-condition to the future consideration of this more extensive consolidation would be determining whether Exempt Market Dealers (**EMDs**), Portfolio Managers (**PMs**) and Scholarship Plan Dealers (**SPDs**) want self-regulation. Without the willing collaboration of these other market participants, a successful consolidation with investment dealers and mutual funds dealers is unlikely.

Even with willing partners, the consolidation of this disparate group of market participants into NewCo, and then implementing NewCo's capacity to regulate them, would be a novel, complex and time-consuming undertaking.

At best, the MFDA proposal to include other categories of registration, currently directly regulated by the CSA, into NewCo would require a lengthy phased approach to be successful. The inevitable public confusion during this phased in approach would be magnified many times by the addition of EMD, PM and SPD clients.

IFIC members would support further discussion to assess the issues involved in the implementation of this larger self-regulatory mandate, but only after NewCo has been established for the regulation of investment dealers and mutual fund dealers.

## Proposal to Transfer Market Regulation

IFIC does not support the proposal to transfer market regulation. No case has been made to justify the transfer of market surveillance, and there is no evidence that IIROC has failed to comply with its market surveillance obligations under the CSA Recognition Orders.

Arguably, the transfer of market regulation from IIROC to a statutory regulator could allow the new SRO to focus exclusively on mutual fund and investment dealer issues. It would however, add unnecessary complexity and delay. Federal and provincial proposals for a national regulator do not include consolidating the SROs as part of the initial launch plan precisely because of the of jurisdictional, policy and technical challenges that such a restructuring would face.

## Cost Savings Considerations

Potential operating cost savings should not be a major factor in the development and implementation of a new SRO framework. A single SRO with jurisdiction to regulate investment dealers and mutual fund dealers would result in cost savings to dual platform firms. Deloitte estimated these potential savings to be approximately \$1-2 million per dual platform provider per annum for 10 years.

It is important to note that there could be material membership fee decreases for large and medium-size MFDA dealers; there could also be material membership fee increases for small MFDA dealers absent specific action to address this.

## Conclusion

IFIC's views on the CSA SRO Framework Consultation are anchored in the belief that there is significant value in the SRO model of regulation and that SROs are doing a good job regulating their members. The results of the CSA oversight reviews of the SROs and the SRO enforcement reports and statistics confirm this view.

We also provide our views based on the assumption that the CSA continues to have confidence in self-regulation. If the CSA no longer supports the SRO model, then the CSA must be transparent with those concerns. Fundamentally, self-regulation is a privilege granted by government. As long as the government has trust and confidence in the SROs to uphold their obligations, self-regulation works well for the benefit of governments, investors and the industry. We are confident that the SROs, and ultimately a consolidated SRO, would be able to manage the conflict inherent in self-regulation and to make policy, compliance and enforcement decisions based on the public interest.

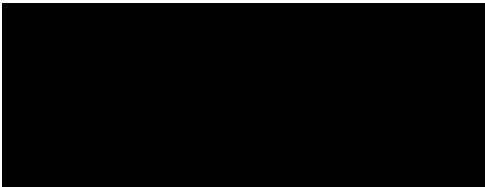
The public interest must be the ultimate objective of this consultation. While perfection is not the standard, we believe a single SRO for investment dealer and mutual fund dealer firms and their representatives would better achieve this objective by reducing investor confusion, enhancing the investor experience and improving investor outcomes.

\* \* \* \* \*

IFIC appreciates this opportunity to provide the CSA with our comments on this important initiative. Please feel free to contact me by email at [pbourque@ific.ca](mailto:pbourque@ific.ca) or by phone at 416-309-2300. I would be pleased to provide further information or answer any questions you may have.

Yours sincerely,

THE INVESTMENT FUNDS INSTITUTE OF CANADA



By: Paul C. Bourque, Q.C, ICD.D  
President and CEO

Enclosure: Appendix A – CSA Consultation Paper 25-402: *Consultation on the Self-Regulatory Organization Framework* Questions



## CSA Consultation Paper 25-402 – Consultation on the Self-Regulatory Organization Framework Questions

| General Questions |  | Response   |
|-------------------|--|--|
| A.                | The CSA is seeking general comments from the public on the issues and targeted outcomes identified, as well as any other benefits and strengths not listed in section 4 that should be considered. In addition, please identify if there is any other supporting qualitative or quantitative information that could be used to evidence each issue and/or quantify the impact of the issues noted in the Consultation Paper. |  |
| B.                | Are there other issues with the current regulatory framework that are important for consideration that have not been identified? If so, please describe the nature and scope of those issues, including supporting information if possible.  |  |
| C.                | Are any of the CSA targeted outcomes listed more important from your perspective than other outcomes? Please explain.  | <p>All the outcomes are important, however, IFIC considers the five most important outcomes are those that improve investor protection and otherwise benefit investors. We have ranked the targeted outcomes in accordance with those criteria.</p> <ol style="list-style-type: none"> <li>1. A regulatory framework that provides appropriate investor protection (please see our response to 5.2 concerning the description of this targeted outcome).</li> <li>2. A regulatory framework that provides consistent access, where appropriate, to similar products and services for registrants and investors.</li> <li>3. A flexible regulatory framework that accommodates innovation and adapts to change while protecting investors.</li> <li>4. A regulatory framework that minimizes opportunities for regulatory arbitrage, including the consistent development and application of rules.</li> <li>5. A regulatory framework that minimizes redundancies that do not provide corresponding regulatory value.</li> </ol> |

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| <p>D.</p>                       | <p>With respect to Appendix F, are there other documents or quantitative information / data that the CSA should consider in evaluating the issues in light of the targeted outcomes noted in this Consultation Paper? If so, please refer to such documents.</p>  | <p>IFIC believes that the best objective evidence of the governance and operations of the MFDA and IIROC can be found in the CSA Review Reports and the SRO’s enforcement record.</p> <p>IIROC Recognition Order - 2008 BCSECCOM 275</p> <p>IIROC Oversight Review Reports 2008 – 2020<br/> <a href="https://www.osc.gov.on.ca/en/Marketplaces_iiroc-oversight-review.htm">https://www.osc.gov.on.ca/en/Marketplaces_iiroc-oversight-review.htm</a></p> <p>MFDA Recognition Order - 2004 BCSECCOM 311</p> <p>MFDA Oversight Review Reports – 2010 – 2018<br/> <a href="https://www.osc.gov.on.ca/en/search.htm?qquery=MFDA+Oversight+Review+Reports">https://www.osc.gov.on.ca/en/search.htm?qquery=MFDA+Oversight+Review+Reports</a></p> <p>IIROC Enforcement Report 2019<br/> <a href="https://www.iiroc.ca/news/Documents/IIROC2019EnforcementReport_en.pdf">https://www.iiroc.ca/news/Documents/IIROC2019EnforcementReport_en.pdf</a></p> <p>MFDA Enforcement Statistics <a href="https://mfda.ca/enforcement/enforcement-statistics/">https://mfda.ca/enforcement/enforcement-statistics/</a></p> |
| <p><b>Targeted Outcomes</b></p> |   | <p><b>Response</b></p>   |
| <p><b>1</b></p>                 | <p><b>A regulatory framework that minimizes redundancies that do not provide corresponding regulatory value.</b></p>  |  |
| <p>1.1</p>                      | <p>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.</p> <p>In addressing the question above, please consider and respond to the following, as applicable:</p> <p>a) Describe instances whereby the current regulatory framework has contributed to duplicative costs for dealer members and increased the cost of services to clients.</p> <p>b) Describe instances whereby those duplicative costs are necessary and warranted.</p> | <p>The Deloitte report, was prepared for IIROC and assesses the benefits and costs of regulatory consolidation in the investment industry. The report estimates an annual costs saving of \$40-50 million across 25 dual platform dealers over a ten-year period if there is a single SRO.</p> <p>Some of the duplicative operating costs cannot be attributed to the regulatory framework but rather are the result of business decisions taken by the firms.</p> <p>a), and b) – see above</p>   |

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|           | c) How have changes in client preferences and dealer business models impacted the operating costs of dealer member firms?  | c) To the extent business model changes are driven by competitive and other business considerations, the impact on operating costs should be offset by increased revenue.  |
| 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?   | The targeted outcome is described appropriately.   |
| <b>2.</b> | <b>A regulatory framework that minimizes opportunities for regulatory arbitrage, including the consistent development and application of rules.</b>  |  |
| 2.1       | <p>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.</p> <p>In addressing the question above, please consider and respond to the following, as applicable:</p> <p>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?</p> <p>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?</p> <p>c) What role should the types of products distributed and a representative's proficiency have in setting registration categories?</p> <p>d) How has the current regulatory framework, including registration categories contributed to opportunities for regulatory arbitrage?</p> | <p>In general, similar products and services should be treated the same way, regardless of the SRO; having a single SRO is likely the only way to avoid inconsistent approaches.</p> <p>For example, our members tell us that the definition of what constitutes income in a client's account varies between the MFDA and IIROC. IIROC permits dividends to be considered income when meeting a client's objectives, but the MFDA does not. In an era of extremely low interest rates, this difference will have significant implications for client outcomes.</p> <p>We also note that the review of client complaints varies between the SROs and with the CSA. The MFDA takes a different approach to the review of client complaints self-reported by MFDA firms than does IIROC for IIROC firm self-reported complaints. Exempt market dealers and portfolio managers have no requirement to self-report client complaints to the CSA.</p> <p>On the other hand, the differences between the MFDA and IIROC relating to how client securities are registered (client name vs. nominee name) and regarding directed commissions are defensible given the different business models overseen by the two SRO platforms.</p> <p>There should continue to be delineation of the registration categories based on products distributed, and a representative's proficiency should be commensurate with the registration category. Prior to a representative starting to deal in additional products, which requires registration in a new category, they should be required to complete the proficiency requirement for the new registration category. There currently exists a proficiency framework that supports the mutual fund, securities, and exempt market registration categories.</p> |

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| 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?  | The targeted outcome is described appropriately.   |
| <b>3</b> | <b>A regulatory framework that provides consistent access, where appropriate, to similar products and services for registrants and investors.</b>   |  |
| 3.1      | <p>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.</p> <p>In addressing the question above, please consider and respond to the following, as applicable:</p> <ul style="list-style-type: none"> <li>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.</li> <li>b) Describe regulatory barriers to the distribution of similar products (e.g. ETFs) available in multiple registration categories.</li> <li>c) Describe any regulatory risks that make it difficult for any one regulator to identify or effectively resolve issues that span multiple registration categories</li> </ul> | <ul style="list-style-type: none"> <li>a) Please refer to response 2.1.</li> <li>b) We note that the barriers to distributing ETFs are business barriers, not regulatory barriers, as noted in the Consultation.</li> <li>c) The CSA does a good job coordinating the identification and resolution of issues that span multiple registration categories.</li> </ul> |
| 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?  | The targeted outcome is described appropriately.   |
| <b>4</b> | <b>A flexible regulatory framework that accommodates innovation and adapts to change while protecting investors.</b>  |  |
| 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.  |  |

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|   | <p>In addressing the question above, please consider and respond to the following, as applicable:</p> <ul style="list-style-type: none"> <li>a) How does the current regulatory framework either limit or facilitate the efficient evolution of business?</li> <li>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.</li> <li>c) Describe factors that limit investors' access to a broad range of products and services.</li> <li>d) How can the regulatory framework support equal access to advice for all investors, including those in rural or underserved communities?</li> <li>e) How have changes in client preferences impacted the business models of registrants that are required to comply with the current regulatory structure?</li> </ul> | <ul style="list-style-type: none"> <li>a) A dealer must become a dual platform dealer to allow some representatives of a firm to sell a broader range of products, beyond mutual funds and ETFs, which currently leads to additional costs as per the Deloitte study referenced in 1.1.</li> <li>b) Please see the response to 3.1(b).</li> <li>c) We agree that currently the client experience is subject to friction from moving platforms relating to the collection of KYC and loss of historical performance data for securities and accounts transferred. A single SRO should reduce or eliminate this friction.</li> </ul> |
| <p>4.2</p>  | <p>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?</p>   | <p>The targeted outcome is described appropriately.</p>  |
| <p><b>5 A regulatory framework that is easily understood by investors and provides appropriate investor protection.</b></p> |   |  |
| <p>5.1</p>  | <p>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.</p>   | <p>The majority of the public has little knowledge or understanding of the regulatory framework. Nor should we expect such an understanding by every investor. An investor needs information about the regulatory framework when they have a complaint. When investors need this information, it should be accessible, simple and plain.</p>   |

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|                 | <p>In addressing the question above, please consider and respond to the following, as applicable:</p> <p>a) What key elements in the current regulatory framework (i) mitigate and (ii) contribute to investor confusion?</p> <p>b) Describe the difficulties clients face in easily navigating complaint resolution processes.</p> <p>c) Describe instances where the current regulatory framework is unclear to investors about whether or not there is investor protection fund coverage.</p> | <p>There are likely to be benefits to investors in reducing their confusion including:</p> <ul style="list-style-type: none"> <li>• better use of the complaint resolution process;</li> <li>• easier access to a single investor protection framework; and</li> <li>• less overall investor confusion, which should enhance clients' confidence in the investment industry, thereby leading to greater opportunity to benefit from it.</li> </ul> <p>There is some logic to the concept of a single SRO governing all retail-facing products and services (trading and portfolio management, as applicable, by securities dealers, mutual fund dealers, portfolio managers (for high net worth managed accounts only), exempt market dealers and scholarship plan dealers). However, in the Canadian context, this is not a practical approach. The first question is whether CSA directly regulated registrants want self-regulation. Conscripting of registrants into an SRO is not self-regulation. Furthermore, this additional consolidation would add significant complexity to an already complex project and would require a much longer, phased approach for the new SRO to operate successfully. There would likely be substantial investor confusion during a phased approach as the SRO framework goes through several evolutions, which is contrary to the CSA's goal of reducing overall investor confusion over the short-medium term.</p> |
| <p>5.2</p>      | <p>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?</p>  | <p>As we noted in response to 5.1, the majority of the public has little knowledge or understanding of the regulatory framework. Nor should we expect such an understanding by every investor. As a result, we would suggest revising the targeted outcome to read: "A regulatory framework that provides appropriate investor protection."</p>  |
| <p><b>6</b></p> | <p><b>A regulatory framework that promotes a clear, transparent public interest mandate with an effective governance structure and robust enforcement and compliance processes.</b></p>  |  |
| <p>6.1</p>      | <p>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</p>  | <p>If the government and regulators have sufficient confidence in an SRO to grant a recognition order, the public should be able to rely on that and have confidence in the framework.</p> <p>The real question is whether the government and statutory regulators have confidence in self-regulation. There are legislative provisions for the oversight</p>  |

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|            | <p>identification of data sources to quantify the impact or evidence your position.</p> <p>In addressing the question above, please consider and respond to the following, as applicable:</p> <ul style="list-style-type: none"> <li>a) Describe changes that could improve public confidence in the regulatory framework</li> <li>b) Describe instances in the current regulatory framework whereby the public interest mandate is underserved.</li> <li>c) Describe instances of how investor advocacy could be improved.</li> <li>d) Describe instances of regulatory capture in the current regulatory framework.</li> <li>e) Do you agree, or disagree, with the concerns expressed regarding SRO compliance and enforcement practices? Are there other concerns with these practices?</li> </ul> | <p>of SROs to ensure the SROs continue to be capable and willing, and in fact carry out, their public interest duties in accordance with their recognition orders. There are regular CSA oversight audits of SROs and the results of these audits are made public.</p> <ul style="list-style-type: none"> <li>a) The CSA could enhance the level of oversight of SROs by conducting more targeted, risk based audits of their operations.</li> <li>b) We are unaware of any instances of the SROs underserving their public interest mandates. If there were such instances, we would expect the CSA to be aware of and disclose them in their periodic overview reports.</li> <li>c) Investor advocacy could be improved by ensuring Board members have relevant knowledge and experience of consumer issues.</li> <li>d) We are unaware of any instances of SRO regulatory capture. If there were such instances, we would expect the CSA to be aware of and disclose them in their periodic overview reports.</li> <li>e) The SROs publish annual reports of their enforcement activity. These results compare favourably to many CSA member enforcement results in terms of number of cases and penalties. The CSA members have the power to review any ruling or decision of an SRO, including discipline decisions at the request of any person affected by those rulings or decisions. If there are concerns with the number of cases, the types of respondents, the types of penalties, the timeliness of the process, or the quality of the SRO panel decisions, we would expect the CSA, as part of the review and oversight process, to ensure corrective action was taken to address these shortcomings.</li> </ul> |
| <p>6.2</p> | <p>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?</p>  | <p>The targeted outcome is described appropriately. While improvement is always possible, we believe the current SRO regulatory framework promotes the public interest, has robust governance and effective compliance and enforcement processes.</p>   |

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| <p><b>7</b></p> | <p><b>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.</b></p>  |   |
| <p>7.1</p>      | <p>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.</p> <p>In addressing the question above, please consider and respond to the following, as applicable:</p> <p>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?</p> <p>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.</p> | <p>Prior to the mid-1990s, stock exchanges performed both market and member regulation. Member regulation was transferred by the exchanges to the Investment Dealers Association (now IIROC) and, when the Toronto Stock Exchange (TSX) demutualized and became a for profit public company, it was necessary to transfer market regulation to an independent regulator. The CSA considered a number of alternatives, but approved the creation of Regulation Services Inc. (RS Inc.) in 2002 to carry on the market regulation that was previously conducted by the TSX. That work was carried on by IIROC when the IDA merged with RS Inc. in 2008 and continued to be overseen by the CSA under a new recognition order developed for IIROC.</p> <p>This arrangement for market regulation, as approved and overseen by the CSA, works well.</p> <p>a) While improvement is always possible, we believe IIROC delivers timely, efficient and effective market regulation services. The CSA, through a “lead” regulator model (the OSC for the TSX and CDN and the ASC and BCSC for the TSX Venture Exchange), conducts regular oversight audits of IIROC’s market regulation activities, identifies deficiencies and ensures corrective measures, if necessary, are taken.</p> <p>b) The consolidation of market regulation in a single statutory regulator has the potential to avoid gaps, eliminate information silos, and support a single view of Canadian capital markets to better manage systemic risk. This approach must, however, be implemented by the provincial and federal governments. Unfortunately, this solution has not been implemented. The provincial governments would likely not agree to permit the consolidation of market regulation in a single CSA member. The Cooperative Capital Market System has proposed the creation of the Capital Markets Regulatory Authority (CRMA) to administer the proposed Capital Markets Stability Act to manage systemic risk, but not all CSA members are part of the cooperative system and there is no date for the CMRA launch.</p> |



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| 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? | The targeted outcome is appropriate. The current system achieves the outcome well. A single statutory market regulator could provide more effective systemic risk management, but the provincial and federal governments have been unable to provide a consolidated statutory alternative to the current SRO model. |
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