Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

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 Office
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 Public Safety, Prince Edward Island

c/o
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/ Autorités canadiennes en valeurs mobilières (CSA)

Consultation Paper 25-402 - Consultation on the Self-Regulatory Organization Framework

Dear CSA Members and Staff,

1. Introduction

The Mutual Fund Dealers Association of Canada (MFDA) is pleased to provide comments on the current structure of the self-regulatory organization (SRO) framework as requested by the CSA in its Consultation Paper 25-402 referred to above (CSA Consultation Paper).

The MFDA is the national SRO for 90 mutual fund dealers and 80,000 approved persons of such dealers across Canada providing broad-based financial advice and services to millions of households in Canada. MFDA was created at the instance of the CSA in 1998 as a public interest regulator, is recognized under applicable legislation in 8 provinces and operates in all provinces

and territories of Canada. Its operations are restricted to securities regulation and it has no trade association or industry representation functions.

The 2020 MFDA Wealth Management Footprint Report provides a detailed summary of the MFDA Member client profile in Canada. MFDA Members service 9.1 million households, representing 56% of Canada's households. Of these MFDA serviced households, 81% are mass market clients (with less than $100,000 in financial wealth) and they account for 26% of the financial wealth managed by MFDA Members. This can be contrasted with the broader Canadian investor population where there is a similar percentage of mass market households (79%), but they account for only 4% of Canada's financial wealth. The result of this is that mass market investors, who are typically middle- and working-class Canadians, are able to access a range of advice and services from MFDA Members that they could not otherwise access from any other category of advisory firm which typically have minimum account thresholds of $100,000 or more. It is important and in the public interest for this market segment, and the many others that exist in Canada, to continue to be served by appropriate distribution channels which are recognized by the securities regulatory framework that is ultimately adopted.
See: https://mfda.ca/wp-content/uploads/MFDAwealthfootprint2020.pdf

2. General Observations and Background of MFDA Comments

The MFDA has in the past several years conducted and published extensive research and policy analysis on the matter of the SRO regulatory framework in Canada, which is the subject of the CSA Consultation Paper. Most recently, in February 2020 the MFDA published its paper "A Proposal for a Modern SRO: A Special Report on Securities Industry Self-Regulation" (Modern SRO Report). The Modern SRO Report contains detailed discussion and policy analysis on the SRO experience in Canada and internationally, including a summary of benefits and concerns with SROs, regulatory best practice trends relevant to SRO reliance, optimal securities regulatory structure design principles and recommendations for the key elements of a new single SRO designed to meet Canada's future needs. As such, it is noted that many elements of the Modern SRO Report overlap with the comment requested by the CSA in its Consultation Paper.

While we have not repeated all of the contents of the Modern SRO Report, it should be noted that our comments in respect of the CSA Consultation Paper are supplemented and further explained by the analysis and commentary in the Modern SRO Report. It should also be noted that all of the issues raised by CSA are familiar to the MFDA and were taken into account and addressed in its proposal for the creation of a new SRO with the features and functions described in the Modern SRO Report. Moreover, and in the context of the CSA Consultation Paper, the MFDA's proposal for a new single SRO can be taken to address and satisfy the "targeted outcomes for consideration" described by the CSA with respect to each issue.

The CSA Consultation Paper, as it states, was informed by an informal stakeholder consultation process conducted by the CSA. Certain aspects of the CSA's SRO framework review and the informal consultation process are particularly relevant and deserve specific comment.

(i) CSA Decision to Rely on SRO Model

The questions and request for comment in the CSA Consultation Paper appear to assume the continued future reliance on the SRO model in Canada. The MFDA believes that is the correct conclusion as reflected in its Modern SRO Report, however, in its work MFDA first started with the fundamental question of whether it is in the public interest for securities regulation in Canada to use the SRO model at all. It is respectfully submitted that in order for a complete and effective review of the SRO structure in Canada to occur, there should be firm direction on that fundamental question by the members of the CSA and their respective governments - as the legislative and empowered policy makers on the subject. Other stakeholders, of course, will have their views but they should properly and fairly be based on the "official", as it were, policy decision.

(ii) The Ideal SRO Solution

In its informal stakeholder consultation, the CSA requested an answer as to "the ideal solution for the Canadian SRO regulatory framework" (Informal consultation question 8). In other words, after comment on the variety of specific issues and questions identified, the most important and pertinent question is: what should be done to the SRO framework? The MFDA's answer to that question is set out in the Modern SRO Report which recommends *the creation of a new single SRO with an enhanced governance and accountability framework for all registered firms in Canadian capital markets that deal in securities and provide advice to investors.* A similar proposal has been made by the Ontario Capital Markets Modernization Taskforce (the 'Ontario Taskforce') in its July 2020 Consultation Report.

(iii) Desire/Need for Change

A common theme identified in the CSA's informal consultation as being apparently held by all stakeholders was the following:

> "Industry groups and associations, as well as investor advocates *all* [emphasis added] expressed a desire for change to the current regulatory framework given changes that have occurred in the business environment, client needs and expectations, and registrant demographics."

The overwhelming consistency of this theme was not a surprise to the MFDA and has been one of the main catalysts of the MFDA's work on the SRO framework reflected in the Modern SRO Report. Of particular importance is the fact that this theme also reflects the views of Canadian investors - arguably the most important public interest constituency served by the Canadian securities regulatory framework. Evidence of this fact are the results of a comprehensive national poll (the 'National Poll') recently conducted on behalf of the MFDA by a prominent and independent survey firm and released to the CSA and public at large. The support by Canadian investors for changes to the SRO regulatory framework in many areas, particularly accountability and governance, was very high.
See: https://mfda.ca/wp-content/uploads/InvSRO_Report.pdf

(iv) CSA – Achieving National Regulator Benefits through SRO Design

The CSA members and all stakeholders in this consultation process recognize that there are other initiatives and reviews underway with respect to the future of Canadian securities regulation - one of the most significant in terms of potential impact being the development of the Co-operative Capital Markets Regulatory System. Whatever the outcome of that development, there is an important aspect of the proposals of the MFDA and the Ontario Taskforce that should be borne in mind. Under those proposals the direct role of the CSA in a strengthened SRO governance and accountability framework would result in CSA members achieving many of the benefits of a national regulatory model, while preserving individual provincial/territorial jurisdiction and authority. In addition, the new national SRO as proposed is compatible and consistent with any expected national statutory regulator and it would require little, if any, change whether or not such a statutory regulator is developed.

3. Benefits and Strengths of current SRO Framework

The MFDA agrees that there are important strengths and benefits to the SRO model and, in choosing that structure for its proposed new single regulatory authority, it identified the need to build on the strengths of the model as well as address its weaknesses. However and as outlined below, some of the strengths that have been identified in the informal CSA consultation and reflected in the CSA Consultation Paper appear to be constrained by the current two SRO framework in Canada and, in effect, understate the full potential of the SRO model.

Flexible to Accommodate a new CSA design. One of the most important strengths and benefits of the SRO model, which is not mentioned in the stakeholder comments or the CSA Consultation Paper, is that it is a flexible model capable of accommodating evolving market and industry needs. The structure, function, governance and oversight of SROs have changed dramatically in Canada and elsewhere in the world since they were first created. This flexibility is reflected in the statutory definition of SROs in most Canadian securities legislation which merely requires that the organization has a "regulatory purpose in respect of its operations and business conduct of its members and their representatives with a view to promoting the protection of investors and the public interest." Not only does this statutory recognition of flexibility allow establishment of a new single SRO without legislative change, it permits the introduction of new features to serve existing and future regulatory objectives. Objections to such a new model based on a static view of the form, membership, governance structure and functions of an SRO according to historical experience or current circumstances are simply unfounded and must not be allowed to impede public interest driven regulatory structure reform. As securities regulatory objectives evolve according to capital markets and financial services changes, so too should the form of the regulatory agencies responsible for them.

(i) National scope of SROs

There is little question that the national scope of the existing SROs has served Canada well and any new regulatory framework should be based on that national structure. Many of the benefits long identified for the challenging-to-achieve national securities regulator would be gained.

It is also important to observe that the stated benefit of uniformity of rules and standards inherent in a national SRO does not preclude the accommodation of differences based on justifiable

regional, industry and product considerations. SROs, in particular, have the proven flexibility to organize sub-groups of members and industry participants according to sector, regions and other criteria to focus on subjects where differences in approach may be in order. It is also critical to note that individual CSA members would retain oversight jurisdiction under applicable provincial legislation.

(ii) Specialized industry expertise of SROs

The MFDA agrees that a key strength of the SRO model is the opportunity to bring specialized expertise to industry regulation. However, as implicitly noted by stakeholders in the informal CSA consultation, there are also limitations to this feature that can be improved upon. First, the need to balance industry participation with independent/public board members recognizes that the "public" is a core stakeholder group in securities regulation. Second, the other core stakeholder group identified by both the MFDA and the Ontario Taskforce is the statutory regulators themselves and for that reason it is proposed that they be represented in the governance structure of a new SRO. This feature also serves the additional benefit of accommodating communication between industry participants and statutory oversight regulators facilitating the sharing of expertise – industry and regulatory. Third, it is important to note that CSA staff also have specialized industry and regulatory expertise with respect to their direct registrants and combining such expertise in a new national SRO as recommended in the proposals of MFDA and the Ontario Taskforce, results in a more complete and efficient regulatory staff complement.

(iii) Benefits of a two SRO framework

Fit for purpose regulation. The suggestion that the current two SRO structure in Canada is a benefit because it focuses on the different businesses of investment dealers and mutual fund dealers deserves comment. The classification of the two types of dealers for registration and regulation purposes (including their own SROs) no longer reflects the reality of Canadian financial and securities markets. Not only do the types of business and activities among members in each category differ widely, but the overlap of markets and products dealt with in each category make the dual SRO structure arbitrary and inflexible in meeting the needs of both capital markets and their participants. Developments in securities markets such as product convergence, digital distribution models, globalization and others render current registration categories under securities legislation, as well as the two SRO model, obsolete and inadequate in serving the public interest. The consolidation of regulatory expertise and all market participants in one organization is the only practical and effective way to protect the public while allowing capital markets to grow and innovate to the benefit of Canadians.

Investor access to two SRO protection funds. The two existing investor protection plans for customers of SRO members have served well within their respective limited mandates. It would be expected that such customer protection would continue in the future. Although the MFDA has not advanced specific proposals for protection plans, two observations may be made. First, it is generally acknowledged that the role and scope of protection offered by the existing plans is not well understood by the investing public. Part of the confusion arises from the existence of two plans (as well as similar protection structures in other financial sectors such as banking and insurance) and the kind and amount of risk technically covered. Second, it is hard to justify in an increasingly complex and converging financial/securities marketplace why customers of some

securities registrants benefit from coverage and customers of others do not. The existence of the two separate protection plans has a justifiable origin but their existence in their current forms going forward requires consideration. The MFDA and Taskforce proposals for a single SRO will require the matter to be assessed. There is no reason why a single plan could not be created which fairly underwrites the respective risk profiles of the relevant registrants covered.

(iv) Marketplace surveillance

One of the distinctive features of the SRO model which made it successful in its original form was the commonality of interest among members. Industry participants had a common interest in promoting their businesses which were similar and were prepared to cooperate in setting standards and sanctions for their activities for their mutual benefit. Member regulation of the business conduct and prudential state of registrants and market regulation or surveillance are distinct activities and do not reflect the basis for the commonality of interest among SRO members. Even among investment dealers who are members of IIROC, the number to which market rules apply or have relevance is relatively small. Under the MFDA's proposed SRO model which would include additional direct CSA registrants, the disparity would be even greater.

In addition, marketplace regulation is more aligned with broader financial/economic regulation and control of financial systemic risk which is more properly the responsibility of government agencies including regulators such as the CSA. Those bodies have the scope and authority to oversee and regulate such matters which often involve global activity beyond the jurisdiction of an SRO. This has been the general modern approach in countries around the world, with Canada and the United States being exceptions to that trend. Most recently, Australia reflected this trend with its transfer of the market surveillance function from the Australian Securities Exchange to the statutory regulator, the Australia Securities and Investments Commission, with the government expressly stating that it was more appropriate that such regulation be carried out directly by the statutory regulator.

4. Issues Raised by Stakeholders

CSA has requested comment on 7 issues, various stakeholder comments and the stated Targeted Outcome for Consideration associated with each issue.

Issue 1: Duplicative Operating Costs for Dual Platform Dealers

The MFDA agrees that the identified operating costs (compliance, IT, administrative and fees) to organizations with business units subject to multiple regulatory regimes would be expected to be higher than if they were part of a single regime. While some of such costs may be caused by the regulatory framework, it is also noted that for many organizations the costs are driven more by internal business structure choices. Such choices often reflect the different infrastructure requirements of the respective business units and are not a consequence of the regulatory structure. Nevertheless, apart from the costs to individual organizations driven by business reasons versus regulatory structure, the MFDA agrees that a regulatory framework which increases industry-wide cost inefficiency is not desirable as a public policy matter.

However, the CSA Consultation Paper's framing of the identified cost concerns in the narrow context of the two SRO circumstance in Canada significantly understates and mischaracterizes

the true nature and extent of the problem. The undeniable fact is that Canada has 15 securities regulators comprised of the CSA members and the two SROs. Many SRO members have direct CSA regulated affiliates. In other words, the concern is not just dual (two SRO) platform firms but rather, and more importantly, the fragmented and multiple regulatory structure itself. The obvious solution proposed by both the MFDA and the Ontario Taskforce is to reduce the number of regulators for dealer/advisor registrants engaging in similar activities to one.

Targeted Outcom*e: The MFDA single SRO proposal satisfies the Targeted Outcome for a regulatory framework that minimizes redundancies that do not provide corresponding regulatory value.*

Issue 2: Product-Based Regulation

The MFDA agrees in general with the stakeholder comments with respect to the convergence of registration categories (reflecting advice and product convergence) as well as the opportunities for undesirable regulatory arbitrage. However at the outset, as noted above in Section 3(iii) in '*Fit for purpose regulation*', it should be recognized that the core problem is defined by the obsolete registration categories in applicable legislation and CSA requirements, not by the fact that there are multiple regulators including two SROs. At the same time, the fact that CSA registration categories require SRO membership for only two registrant categories, while other registrants engaging in similar activities are not subject to such a requirement, also contributes to the lack of harmonization, consistency and business structure inflexibility identified. From a broad securities regulation point of view with investor protection and business efficiency as objectives, the primary determination should be: what level of protection and regulatory standards are appropriate for the different products/services offered to investors, regardless of the registration category title? As the stakeholder comments in the CSA Consultation Paper illustrate, the current regulatory standards and framework are outdated.

To the extent that registrants in different registration categories engage in similar conduct in offering similar products and services to the public, it follows that the level of protection and regulatory standards should be similar. In this regard, the regulatory framework should reflect this objective and the optimal regulatory structure can be designed and implemented to ensure such protections and standards are available and effected on a consistent basis. Stakeholders (industry members, regulators and investors) have accepted and adapted in their businesses, operations and product choices to the momentous changes that are occurring in financial services and they should also be able to accept and adapt to the necessary changes to the regulatory structure.

It is acknowledged that the issues are complex and affect wide-ranging interests and will not be easy to deal with. This circumstance is illustrated in the stakeholder comments on the lack of harmonization and fairness in the current balkanized regulatory framework. Again, the obvious answer to addressing the concerns identified is the creation of a single regulatory forum using the SRO structure. With its flexible design features, an updated and modern SRO design reflecting industry evolution and regulatory and governance best practices can be adopted by the CSA to minimize the gaps in protection and efficiency and serve desired securities regulatory objectives. This is the basis of the MFDA's proposal for a new single, national SRO. With all registrants regulated by one frontline organization, governed by the core stakeholder interests (industry,

public and statutory regulators), the chances of improving and maintaining securities regulation in Canada are optimized.

The continuing statutory oversight authority by each CSA member in respect of the proposed new SRO is another important feature - both in its establishment and continuing operations. SROs are regulatory authorities subordinate by legislation to provincial/territorial regulatory oversight. As outlined in the MFDA's Modern SRO Report, the leadership role of the CSA members and their respective governments will be critical in the design and implementation of a new SRO regulatory structure and its oversight. This is as it should be with respect to a new SRO on the basis that, as noted above with respect the state of current regulation, the legislative regulatory framework and the statutory regulators determine the role of SROs, not the other way around.

Targeted Outcome: *Proceeding as proposed by the MFDA and the Ontario Taskforce with a single national SRO regulator will create a regulatory framework that minimizes opportunities for regulatory arbitrage, including the consistent development and application of rules…and much more*.

Issue 3: Regulatory Inefficiencies

Our comments with respect to Issue 2 above as well as Issue 4 below confirm the general view that the current regulatory framework including multiple CSA members and the two SROs contributes to regulatory inefficiencies. The duplicative costs and inefficiencies resulting from these multiple regulators would be minimized by the consolidation of regulatory functions in a single regulator. As observed by stakeholders in the informal CSA consultation, it is important to note that the costs are not only direct, unnecessary expenses of the regulators themselves, but include consequential costs to industry participants and investors (who ultimately bear a large portion of them.)

Not all costs or inefficiencies identified, however, are attributable to the regulatory framework. As an example, the stakeholder comments that there is inefficient investor access to certain products such as ETFs reflects the inherent systems investments required to distribute and service ETF products. There are no regulatory barriers to investors buying ETFs through mutual fund dealers. Industry participants make business and economic choices as to the investment they wish to make in their infrastructure relative to their expected markets, products and profitability.

Targeted Outcome: *The MFDA is of the view that a regulatory framework that provides consistent access, where appropriate, to similar products and services for registrants and investors would be the result of its proposed single national SRO.*

Issue 4: Structural Inflexibility

The MFDA agrees that a regulatory framework that contributes to the kinds of structural inflexibility identified by stakeholders is undesirable and not in the public interest. The issues raised are similar in cause and solution to those in our comments on Issue 2, Product-Based Regulation above. To the extent that the current regulatory framework accommodates different rules and requirements among multiple regulators - which impact the business choices, costs and services of participants - structural inefficiency will continue to exist. However, as noted above, the root problem is not caused by the simple fact of multiple regulators but rather by the fact that

the registration categories for industry participants - particularly dealers - require a choice to be made: direct CSA registrant or member of one of the two SROs.

While not entirely solving the root problem of registration categories, the elimination of multiple regulators in favour of a single organization would go a long way to permitting the development and/or application of rules and requirements that are, to the extent possible, fair to all, harmonized and applied on a consistent basis. It is also noted that the establishment of such a comprehensive national regulator in the form of an SRO is less complicated and disruptive compared to the magnitude of a CSA policy project addressing registration categories, which would require legislative changes in multiple jurisdictions.

What appears to be the general tenor of the issues identified is that the growth of diverse, quickly-evolving products and services, combined with more flexible and open investor choices as to access to such products and services, is not being served by the current regulatory structure. Those observations are valid but do not address what substantive regulatory structure changes should be made and how. The growing complexity of products, services and investor preferences suggests that new, coordinated, principled and comprehensive regulatory approaches will be required that can only be achieved through a consolidated regulatory framework (as reflected in the MFDA and Ontario Taskforce proposals) which is not limited to the two SROs, but also includes CSA members.

The inefficiencies identified by stakeholders in the informal CSA consultation also seem to be focused on the interests of individual industry members, rather than the broader economic and public interest objectives of Canada, which securities regulation serves through the maintenance of efficient capital markets and which requires that the interests of all stakeholders be considered in a fair and balanced manner. One example is the 270-day proficiency upgrade rule raised by some of the industry stakeholders. The arguments for and against eliminating the rule, as well as the broader public policy concerns raised, are well-known to the CSA and the CSA has recognized that one of the determinative public interest considerations with respect to this issue is the need to ensure continued access to financial products and services to mass market investors in Canada. In other words, in the context of balancing stakeholder interests, while elimination of the 270-day rule may benefit certain industry stakeholders, it may also have a concurrent negative impact on other industry stakeholders and investors, and the CSA must take these competing interests into account. In the view of the MFDA, the forum of a comprehensive national SRO regulator with direct CSA participation in governance would be best positioned to serve and balance these kinds of competing interests.

Targeted Outcome: *In sum, a flexible regulatory framework that accommodates innovation and adapts to change while protecting investors, and addressing the interests of all industry stakeholders in a fair and balanced manner, would be achieved by the creation of a consolidated national SRO regulator as proposed.*

Issue 5: Investor Confusion

The MFDA agrees that the sources of investor confusion cited by stakeholder comments are generally accurate, being: regulatory overlap, complaint resolution, investor protection fund coverage and multiple registration categories and titles.

The matters of regulatory overlap and multiple registration categories are common to Issues 2, 3 and 4 above, and our comments on investor protection fund coverage in Section 3(iii) above pertain in this context as well.

With respect to the complaint resolution process, the concerns raised regarding understanding and access are valid. In addition, however, the actual effectiveness of the processes has been and continues to be a source of frustration for investors. In this regard, it is noted that the Ontario Taskforce has proposed that OBSI, as a complaint resolution forum, be granted binding decision-making powers in the context of greater oversight by the CSA with appropriate avenues of appeal. The MFDA has endorsed those proposals and believes that they would alleviate some of the uncertainties and investor dissatisfaction with the current processes.

In order to address the general concern of investor confusion, investor expectations must be addressed. Investor expectations with respect to the role and effectiveness of the securities regulatory framework including the SROs has recently been confirmed in the National Poll of Canadian investors referred to above in Section 2(iii), and these expectations include as follows:

- **88%** of Canadians believe that it is time for CSA regulators to strengthen their oversight of the investment industry.
- **Over 80%** of Canadians support having representatives of CSA regulators on the board of a new single SRO and believe that it would (i) bolster public confidence; (ii) increase the level of trust in the oversight of a new SRO as compared to now; and (iii) help ensure that SRO board decisions are made in the public interest.
- **91%** of Canadian investors believe that regulation of similar services and products should be the same and investors should be entitled to the same protections regardless of the dealer category.

Targeted Outcome: *The MFDA is strongly of the view that creating a simpler and more effective regulatory regime through a single national SRO with direct CSA participation in governance will result in a regulatory framework that is easily understood by and meets the expectations of Canadian investors while also providing appropriate investor protection.*

Issue 6: Public Confidence in the Regulatory Framework

The matter of public confidence in the regulatory framework is, in the view of the MFDA, one of the most important considerations in an assessment of the current structure and, in particular, the role of SROs. To repeat, this view has been confirmed in clear terms by the results of the National Poll referred to in our comments on investor confusion in respect of Issue 5 above. On the issue of public confidence, Canadian investors felt as follows:

- **Less than half (48%)** trust the investment industry to make decisions that are in the public interest and not their own.
- **76%** think conflicts of interest among SRO board members happen frequently and are not declared or eliminated before making important decisions.
- **60%** believe the current regulation model of the investment industry is not working and think the government securities regulators need to be more directly involved.

These results demonstrate that the critical public confidence objective is not being satisfied by the current regulatory framework. It is not the case, as some stakeholders in the informal CSA consultation evidently commented, that there "is a risk that a loss of confidence can occur in the SRO's ability to meet its public interest mandate"…the fact is that it has already been lost or, at least, severely compromised according to a large majority of Canadians.

This conclusion should not be a surprise as the maintenance of public confidence in SROs to act in the public interest and manage conflicts of interest has been a critical consideration in the structuring - and elimination - of SROs in countries around the world. In the United Kingdom (which the CSA Consultation Paper refers to as a comparator jurisdiction), it is noted that a failure to serve the public interest was a primary reason for the elimination of SROs in securities regulation. In his testimony on the establishment of the Financial Services Authority in 1997 Gordon Brown, Chancellor of the Exchequer, stated: "The current system of self-regulation will be replaced by a new and fully statutory system, which will put the public interest first, and increase public confidence in the system." Similarly, the extensive academic and professional commentary listed in the resources compiled by the MFDA and referred to in the response in Section 5 below, highlights the critical relationship between the public interest mandate of securities regulators and the importance of ensuring public confidence in the regulatory model.

Historically, there have been many supportive and incremental changes to strengthen the public interest mandate and public confidence in the SRO model which have included changes to strengthen SRO governance with the amplification of the role played by both the public as well as government. Such changes have invariably been driven by conflicts concerns. The creation by the US Congress of the Public Company Accounting Oversight Board (PCAOB) after the Enron scandal is an illustrative example. When considering the appropriate governance model for the PCAOB, the US Congress expressly rejected the historical industry/public director SRO governance model as having proven 'unsatisfactory'. Instead, Congress adopted a model where all PCAOB directors, including the Chair, are selected by the Securities and Exchange Commission, as a 'more effective means of addressing conflicts of interest'. Similarly in Canada, representatives of the CSA sit on the six person Council of Governors of the Canadian Public Accountability Board (CPAB) which is responsible for appointing the members of the board of directors of CPAB.

Finally, the MFDA agrees with stakeholder comments that regulatory capture and SRO compliance concerns as noted in the CSA Consultation Paper are consequences of a less than robust recognition of the public interest mandate and the importance of ensuring public confidence in the structure and operations of the two Canadian SROs. We also agree that the suggested formal investor advocacy mechanisms and more robust CSA oversight of the SROs would improve adherence to their public interest mandates and increase public confidence. In this regard, we note that strengthening the role of CSA members in SRO oversight and direct participation in SRO governance are key recommendations of both the Ontario Taskforce and the MFDA.

Targeted Outcome: *The MFDA endorses the Targeted Outcome of a regulatory framework that promotes a clear, transparent public interest mandate with an effective governance structure and robust enforcement and compliance process - all of which is achievable by a new single national SRO with the features proposed by the MFDA and the Ontario Taskforce.*

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

The views of the MFDA with respect to the relationship of the separate functions of market surveillance and business conduct/prudential regulation are noted in the CSA Consultation Paper and in our comments under Section 3(iv) above. They are also explained in more detail in the Modern SRO Report.

As a business conduct/prudential securities regulator, MFDA's primary concerns and observations are that (i) market and member regulation are different functions affecting different participants and do not efficiently fit together in the same SRO, and (ii) market regulation, with its systemic risk implications, is more appropriately the function of the government securities regulators.

If it is ultimately decided that an SRO rather than statutory regulators should conduct market surveillance, two options are available that would improve on the current regulatory structure, provided they include the strengthened governance and accountability framework recommended by the Ontario Taskforce. The first option would be for this function to be performed in a comprehensive single SRO model as recommended by the Ontario Taskforce. A second, simple and inexpensive solution in the context of the proposal for a new single 'member regulation' SRO, would be to leave market surveillance/regulation as the sole activity of IIROC whose members would be those relatively few registrants to whom such regulation is relevant. Both options, with the strengthened governance and accountability framework, would help achieve the key regulatory objectives for the CSA of increased market visibility, direct data access and ability to develop in house expertise in this critical area.

Targeted Outcome: *The MFDA endorses the Targeted Outcome of an integrated regulatory framework for markets and the management of systemic risk, with the features described in the CSA Consultation Paper, but believes such regulation is most appropriately conducted by CSA directly, or in another organization separate from the business conduct/prudential regulation of registrants. If it is decided to combine such function in a comprehensive SRO, a strengthened accountability and governance framework as recommended by the Ontario Taskforce would be critical to achieving this Targeted Outcome.*

5. Additional Information and Data

In response to CSA's request for additional documents, data and information that should be considered by CSA in its analysis of the issues and outcomes noted in the CSA Consultation Paper, MFDA refers CSA to the following:

MFDA Special Report on Securities Industry Self-Regulation – is a comprehensive review of the Canadian and International experience with SROs, including opinion and analysis by regulatory bodies, academic authorities and informed industry and public/investor stakeholders, with relevant reference authorities cited. These reference authorities, as well the regulatory policy analysis in the Report, are directly relevant to the issues being considered by the CSA. See: https://mfda.ca/wp-content/uploads/MFDA_SpecialReport-3.pdf

MFDA Wealth Management Footprint Report – provides current data as to the expansive wealth management footprint of MFDA members in Canada including client, advisor and member profile. See: https://mfda.ca/wp-content/uploads/MFDAwealthfootprint2020.pdf

MFDA Investor Research Survey – *'What Canadian investors want in a modern SRO'* – designed and conducted by MaruBlue, examines Canadian investors' expectations, priorities and hopes for the future SRO framework in Canada and highlights their desire for a model that emphasizes greater accountability, government oversight and investor protection.
See: https://mfda.ca/wp-content/uploads/InvSRO_Report.pdf

The foregoing is respectfully submitted by the MFDA in response to the request of the CSA in Consultation Paper 25-402. CSA Members are to be commended for the decision to review the current SRO regulatory framework in Canada. The MFDA would be pleased to contribute further in any way helpful to the work of the CSA on this important project.

Yours truly,

Mark T. Gordon
President and CEO