English Translation

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BY EMAIL

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Subject: CFIQ comments on regulatory and administrative burden reduction

Sir,

The Conseil des fonds d'investissement du Québec (CFIQ) appreciates the opportunity offered by the Ministère de l'Économie et de l'Innovation's consultation to identify opportunities to reduce regulatory and administrative burdens facing the investment funds industry. The CFIQ is the Québec voice of The Investment Funds Institute of Canada (IFIC), which 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.

The CFIQ operates within a governance framework that gathers member contributions through working committees. The recommendations of the working committees are submitted to the committees of the CFIQ and IFIC and to the CFIQ board of governors. This process results in a submission that reflects the input and direction of a broad range of industry members.

We congratulate the government of Québec on its efforts to reduce the regulatory burden of Québec businesses. Investment funds represent 38% of the financial wealth of Quebecers, so this work will help the industry in its efforts to serve the interests of investors. Regulatory requirements that are no longer necessary or that no longer serve their purpose impose compliance costs on businesses and on the economy in the form of fewer resources allocated to innovation, growth opportunities and reduced efficiency. In the end, all these costs are borne by investors. We appreciate the need to balance burden reduction without compromising investor protection. IFIC has recently made submissions to this effect to the Canadian Securities Administrators (CSA)[1] and to the Ontario Securities Commission (OSC)[2].

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[1] https://www.ific.ca/wp-content/uploads/2019/12/Submission-CSA-Proposal-to-Reduce-the-Regulatory-Burden-for-Investment-Fund-Issuers-December-9-2019.pdf/23797/

[2] https://www.ific.ca/wp-content/uploads/2019/02/IFIC-Submission-OSC-Staff-Notice-11-784-Burden-Reduction-March-1-2019.pdf/21945/

Our comments focus on opportunities for regulatory burden reduction in the following areas:

I. The regulatory development process
II. Investment fund regulatory framework established by the CSA
III. Tax issues and decision-making process at Revenu Québec
IV. Improvements to the consultation process

I. The regulatory development process

Generally, to achieve effective and optimal regulation, we recommend that any regulatory development process include two essential elements:

1. Performance of a regulatory impact analysis
2. A robust cost-benefit analysis

We examine these two elements below.

1. Implement a Regulatory Impact Analysis

We encourage the use of Regulatory Impact Analysis (RIA) in the rule development process. This can benefit sectors of the economy beyond just the financial services industry. A solid regulatory impact analysis begins with identifying the problem to solve, the possible solutions, and the desired benefits or results, followed by a cost-benefit analysis which should go beyond just monetary costs and include the time and resources that businesses must dedicate to implementing any regulatory change, as well as the opportunity costs.

In their document entitled "*Reforming Regulatory Analysis, Review and Oversight: A Guide for the Perplexed*," Jerry Ellig and Richard Williams discuss the importance and role of RIA:

> *"The most extensive RIA requirements apply to economically significant regulations. A thorough RIA should do four things:*
>
> 1. *Assess the nature and significance of the problem the agency is trying to solve, so the agency knows whether there is a problem that could be solved through regulation and, if so, the agency can tailor a solution that will effectively solve the problem.*
> 2. *Identify a wide variety of alternative solutions.*
> 3. *Define the benefits the agency seeks to achieve in terms of ultimate outcomes that affect citizens' quality of life, and assess each alternative's ability to achieve those outcomes.*
> 4. *Identify the good things that regulated entities, consumers, and other stakeholders must sacrifice in order to achieve the desired outcomes under each alternative. In economics jargon, these sacrifices are known as "costs," but just like benefits, costs may involve far more than monetary expenditures.*
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> *Without all this information, regulatory choices are based on intuition."*

In 1995, the Organisation for Economic Cooperation and Development (OECD) produced a reference checklist for regulatory decision making. This regulatory checklist poses questions that political decision makers should ask when they assess their response to a perceived public policy problem. The checklist defines the framework for a rigorous RIA process which will ensure that:

a. the public policy problem is properly articulated and supported;

b. the problem can be properly resolved only by developing rules; and

c. the rules developed strike a fair balance between benefits for investors and costs to the industry, which are ultimately paid by investors.

2. A robust cost-benefit analysis

For the investment fund industry, we encourage the Autorité des marchés financiers (AMF) as well as the CSA – the umbrella organization of provincial and territorial securities authorities in Canada – to do more robust cost-benefit analyses than that conducted by the OSC in the *CSA Notice and Request for Comment, Reducing Regulatory Burden for Investment Fund Issuers - Phase 2, Stage 1*[3].

We propose that the AMF (and the CSA) take the following elements into consideration for future cost-benefit analyses, based on the experience of our members:

- Generally, the cost of external advice used by the CSA in its notices does not reflect the fees paid for specialized expertise in securities law and tax law or the use of various external legal advisors, including paralegals, students, associates and partners, each of whom has different billing rates.
- It is important to note that there are different operational costs that apply to managing regulatory changes, including the need to examine, interpret and implement any rule or direction change, however small, in addition to the necessary adjustment of the compliance programs.
- Translation and production costs, required to do business in both French and English, can at times be substantial and must be taken into account for any change affecting websites or documents accessible by the public.

Although each of these elements may not apply to all work flows, these are factors that should be taken into account as the cost quantification process evolves to be more comprehensive.

II. Investment fund regulatory framework established by the CSA

1. Improve regulatory harmonization and interpretation

The industry lauds the mission and work of the CSA, of which the AMF is a member, which seeks to harmonize regulation and its implementation in Canada.

The harmonized system has created many benefits for all stakeholders. We would like to make recommendations to further improve the coordination between the AMF and other CSA members and between the AMF and self-regulatory organizations (SROs).

a) Harmonize interpretation of the rules on outside business activities in the CSA

Although the CSA seeks to harmonize regulation in Canada, the industry has concerns about the different interpretations of the rules on outside business activities between the AMF and other CSA members.

National Instrument 33-109 respecting Registration Information requires the disclosure of all outside business activities by registrants. Registrants must ensure that the outside business activities that they engage in do not prevent them from complying with their regulatory obligations, including the conflict of

[3] https://www.bcsc.bc.ca/Securities_Law/Policies/Policy8/PDF/81-102__CSA_Notice_and_Request_for_Comment___September_12__2019/

interest provisions in *National Instrument 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103).

However, the AMF and the OSC have different interpretations on the activities that must be reported to regulators. The AMF requires that all outside business activities be disclosed, whereas the OSC has exempted the disclosure of certain activities, such as the activities of volunteer coaches of children's sports teams.

In this case, the burden for the industry is twofold. First, disclosure of all activities, as required by the AMF, is unduly time-consuming for all registrants without any measurable added benefit. The regulation seeks to address any material conflicts of interest arising from the outside business activities. Disclosure of outside business activities should be limited to activities where there is a material conflict of interest.

The different interpretations of the regulators force firms with operations in and outside Quebec to comply with divergent interpretations, increasing the regulatory burden. This is not in keeping with harmonization intended by a national instrument.

We recommend that the AMF and other CSA members decide on a harmonized interpretation of the rules on outside business activities which aligns with the spirit of the regulation. We also recommend that the CSA provide guidance for firms on this harmonized approach.

b) Improve regulatory interpretation between the AMF and the MFDA for national instruments

When new regulations or new regulatory reforms come into force, the industry notes different interpretations between the AMF and the Mutual Fund Dealers Association of Canada (MFDA) – a SRO that oversees mutual fund dealers and representatives and that is recognized in most Canadian provinces and territories, but not in Québec. When mutual fund dealers based in Québec, and thus under the supervision of the AMF, also have operations outside Québec, they must also comply with MFDA guidelines, which are not always accepted by the AMF, or vice-versa. This causes confusion for dealers in Québec and increases their regulatory burden.

We recommend better coordination and harmonization between the AMF and the MFDA regarding their expectations for compliance with regulations. A better regulatory framework will ultimately benefit investors. This issue will become more acute with the recent publication of amendments to NI 31-103[4] called Client Focused Reforms.

c) Harmonize the exemption granted by the OSC with respect to Approval 81-901

In June 2019, the OSC granted a revised approval[5] (*Revised Approval 81-901*) whereby investment fund managers no longer have to apply for approval from the OSC to act as trustees of the investment funds they manage. The OSC's rationale was that fund managers can act as trustees, since they are already subject to a robust regulatory framework.

We raised the question with the AMF as to whether it planned to grant a similar approval from the requirement to retain the services of an independent trustee. The AMF informed us that the OSC's approach is reasonable but that the obstacle in Québec to offering an approval is that the Civil Code of Québec requires the participation of a third-party trustee, even though the *Securities Act* gives the AMF the power to grant approval. Some firms held discussions with the AMF to say that in their opinion, the

[4] https://lautorite.qc.ca/en/professionals/regulations-and-obligations/securities/3-registration-and-related-matters-31-101-a-35-101/31-103-registration-requirements-exemptions-and-ongoing-registrant-obligations/
[5] https://www.osc.gov.on.ca/en/SecuritiesLaw_20190627_81-901_approval-of-trustees.htm

regulator is in a position to grant an approval. The AMF has informed us that it is working on this file. We appreciate the AMF's efforts in this regard and we hope to see an outcome shortly.

d) Streamline the treatment of disclosure obligations under Regulation 45-106

For private funds that are not reporting issuers, there is an annual *Report for Exempt Distribution* (Form 45-106F1) for the disclosure of personal and financial information on the purchasers of securities of these funds to the authorities. This task is made more burdensome by regulators' requirements for the use of different templates, which often are not suitable for the volume of information.

We recommend a harmonized template for all jurisdictions in Canada. Given that the CSA is in the process of replacing its current information systems, a project called SEDAR+, we urge the CSA to concurrently align the filing requirements and processes. Furthermore, given the busy holiday season that precedes the filing deadline, it would be helpful to extend the filing deadline to 45 days after the end of calendar year from the current filing deadline of 30 days after calendar year end.

2. Improve regulator processes

a) Codification of frequently granted exemptions

We recommend that the AMF work with the CSA to improve their processes to more quickly codify frequently granted exemptions. For example, an exemption granted at least twice in a two-year period should be codified. This will improve transparency and fairness for market participants and support greater investment fund innovation and efficiency, which in the end will benefit investors.

In this regard, we note the recent publication by the U.S. Securities and Exchange Commission (SEC) of "*Amendments to Procedures with Respect to Applications under the Investment Company Act 1940*."[6] The SEC has made it a priority to propose and adopt exemptive rules so that market players will no longer have to file applications for relief. This will enable the SEC to devote resources to more novel types of applications that can promote industry innovation and expand investment choices for investors. Under the new rules, the SEC will also establish an expedited review procedure for applications that are substantially identical to other applications for which an order granting the requested relief has been issued within two years of the date of the application's initial filing.

b) Improve coordination between CSA members for exemption applications

For some exemption applications for firms registered in Québec, it is necessary to apply to both the AMF and the OSC since the latter is not part of the passport system. These firms occasionally receive from the regulators different questions, at different times. Therefore, the firms have to answer two sets of questions and deal with two different regulators.

We recommend that for exemption applications from firms based in Québec, the AMF, as their principal regulator, coordinate with the OSC so that the filer only receives one set of questions, in order to facilitate and expedite the responses.

c) Audit to the rule, not to guidance

While we appreciate the publication of notices by the AMF on current issues, it is important to recognize that compliance with the rules can be done in many ways, and not only by complying with published staff notices. We recommend that the AMF clearly state that the notices are provided only to help registrants

[6] https://www.sec.gov/rules/proposed/2019/ic-33658.pdf

implement their compliance program. Consequently, during audits, AMF staff should verify compliance with regulatory requirements and not with the notices. This clarification will reduce the regulatory burden on the industry by offering some flexibility in complying with regulatory requirements. Industry members will know that their compliance policies and procedures will not be considered inadequate only in light of the published notices. IIROC has published Notice 19-0217[7] which clearly explains the role of guidance notes. For example, we refer to the AMF notice of January 7, 2016[8] for which at the time of publication, the regulatory reasoning was contested.

We also recommend that the AMF translate its guidance to English and make it concurrently available to stakeholders. We acknowledge AMF's efforts to provide English translations for key documents. Given that many registrants that are based in Quebec also have operations outside Quebec and vice-versa, their compliance professionals outside of Quebec also need to be aware of AMF guidance. It is more cost effective and timely for the AMF to provide a translation rather than each industry member translating it independently.

We further recommend that the AMF produce a topical reference guide to assist registrants and other stakeholders to more easily locate information regarding compliance and registrant regulation matters.

d) Review of investment fund disclosure requirements

We encourage the AMF and the CSA, as part of their ongoing work to reduce the regulatory burden of investment fund issuers, by reassessing all aspects of investment fund disclosure. The current disclosure regime for investment fund issuers is based on disclosure requirements for corporate issuers or has become obsolete or redundant following the introduction of the "Fund Facts" and "ETF Facts" documents. In this regard, we suggest that existing disclosure be assessed from the point of view of the information required by an investor, the disclosure required for registrants to fulfill their product knowledge obligations, and the information that regulators want to carry out their mandate. This way, the information that investment fund issuers must disclose and the way it is disclosed can be assessed to better respond to each stakeholder. This will result in a more significant and relevant disclosure for each stakeholder.

Specific recommendations include:

- Review the content of the consolidated simplified prospectus to assess the relevance of disclosure for each group of stakeholders mentioned above.
- Eliminate the obligation for fund issuers to renew and file a prospectus annually, with all the accompanying documents other than Fund Facts or ETF Facts.
- Eliminate duplicate information in the same document, as in the case of parts of the prospectus for exchange-traded fund (ETF) issuers, as well as between the prospectus and the Fund Facts or ETF Facts.
- Eliminate duplicate information in documents. For example, the long form prospectus requires the inclusion of information, such as the total expense ratio (TER), which is also provided in the Management Report of Fund Performance (MRFP). Since the MFRP is incorporated by reference in the long form prospectus, we question the need to provide it in the long form prospectus itself. We suggest rather that the long form prospectus reference the information available in these documents.
- Create a form of information circular tailored to investment fund issuers. Although we do not offer specific recommendations because of the short timeframe for providing comments on this wide consultation, our members would be pleased to collaborate with the AMF on this work.

[7] https://www.iiroc.ca/Documents/2019/b6e85104-6dbb-4e32-afeb-93fa5693c474_en.pdf
[8] https://lautorite.qc.ca/fileadmin/lautorite/bulletin/2016/vol13no1/vol13no1.pdf </407

- Reassess the investment fund continuous disclosure regime, specifically, the quarterly portfolio disclosure (QPD) for those funds which provide more frequent portfolio transparency and the MRFPs and financial statements given the low opt-in rates of less than 2% of investors who wish to receive this information.

e) Harmonize CSA information technology systems

The CFIQ encourages the AMF and the CSA to make tangible progress with SEDAR+ and to involve industry stakeholders in order to improve the internal workflow processes of the CSA and of the industry. Our members have suggestions for greater functionality and improvements which would enable regulators and the industry to leverage these systems and the information they contain to automate workflow processes, streamline operations and reduce costs.

Numerous efforts have been made in the past few years to enable registrants to renew their licences or update the information in their file electronically with the AMF. However, we see improvement opportunities to facilitate the transmission of information. The Québec government's ClicSéqur access system and the AMF's online services could be more user-friendly and allow access by more than one authorized person of the registrant, in order to expedite the necessary updates in the registrant's file.

III. Tax issues and decision making process at Revenu Québec

Over the last decade, IFIC has successfully collaborated with several departments within Revenu Québec. We have worked together to improve industry compliance with Revenu Québec regulations and streamlined requirements to the benefit of the Quebec government, Quebec taxpayers and the industry.

We believe there is opportunity to continue to build on this success. We have worked with a small percentage of the departments within Revenu Québec that are responsible for the tax reporting regulations that govern financial institutions. Our successful experiences highlighted the opportunity to broaden the scope of cooperation between government and industry in the tax reporting of investment income.

Where our members experience difficulty with Revenu Québec requirements is usually due to a lack of consultation, unnecessarily complicated regulations or insufficient time for implementation. Our members have also expressed that issues raised with Revenu Québec can take a long time to resolve.

We recommend the creation of a Revenu Québec - Financial Services Advisory Committee that has the ability to bring many departments of Revenu Québec to the table and includes representatives from various industry organizations.

A similar committee was created with the Canada Revenue Agency (CRA) in 2014. It is co-Chaired by the Director General of CRA Rulings and IFIC. The committee's mandate is to improve industry and taxpayer compliance with CRA reporting requirements, improve the operational efficiency of the Canadian tax reporting system, deliver better service to taxpayers and resolve pain points for both government and industry. It also provides a forum to obtain industry input on the effectiveness and ease of administration of contemplated regulatory changes and understand any operational impediments to compliance.

The committee has improved communication and collaboration between the CRA and the financial services industry and we believe that a similar committee with Revenu Québec would be beneficial.

IV. Improvements to the consultation process

Our industry appreciates the fact that decision makers take the time to consult stakeholders. This is an important exercise that allows the necessary information to be gathered for the development of an optimal public policy. We would like to make a recommendation to further improve this process.

We believe that the periods chosen for consultations are as important to the achievement of the objectives as their content. Too often, decision makers publish consultations in and around peak holiday seasons, for example in December or late June. This makes it more difficult for stakeholders to respond to the consultation, which could negatively affect the quality of the comments and consequently the optimal outcome of the consultation.

We appreciate that the AMF and the CSA have taken this into account in their recent consultations. In recent years, we note that their consultations are published at periods that allow stakeholders to make full use of their resources and to have enough time to respond. Regulators have also developed the practice of giving notice of the publication of a major consultation several months in advance.

We recommend that the Québec government and its agencies develop the same processes as the AMF for the choice of the consultation period and adapt the duration to the scope of the consultation. This will enable the consultations to better achieve their objectives of gathering comments after allowing stakeholders the necessary time for a proper analysis.

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Should you require more information, please contact Kia Rassekh, Regional Director of the CFIQ, by email at krassekh@ific.ca or by telephone at 514.985.7025.

Yours truly,

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