



THE INVESTMENT  
FUNDS INSTITUTE  
OF CANADA

L'INSTITUT DES FONDS  
D'INVESTISSEMENT  
DU CANADA

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Member Regulation Policy  
Canadian Investment Regulatory Organization  
Suite 2000  
121 King Street West  
Toronto, Ontario M5H 3T9

Dear Sirs and Mesdames:

**RE: CIRO Rule Consolidation Project – Phase 4**

IFIC is pleased to provide the Canadian Investment Regulatory Organization (**CIRO**) with our comments on the [Rule Consolidation Project – Phase 4 \(Consultation\)](#).

## SUMMARY

IFIC supports CIRO's Rule Consolidation Project (**Project**). In support of the Project, IFIC developed Guiding Principles (**Principles**), set out in our Phase 1, 2 and 3 comment letters (the **Project Comment Letters**), respectively. These Principles will continue to guide our members' analysis of the proposals in each phase of the Project and are repeated below for convenience.

IFIC thanks CIRO for acknowledging and responding to several of our recommendations contained within our Project Comment Letters, committing to the following important procedural revisions:

- extending the Project's remaining comment periods from 60 days to 90 days for Phases 4 and 5,
- publishing the aggregated CIRO Dealer Consolidated Rules (**DC Rules**) for final review and comment by stakeholders after Phase 5 of the Project, but prior to the final approval of the DC Rules, and
- implementing the aggregated DC Rules within an appropriate transition period that reflects the time that will be required by firms to develop and operationalize the new or updated associated policies, procedures, technologies and training.

These procedural revisions will mitigate the industry's capacity limitations and facilitate IFIC's ongoing development and delivery of carefully considered analyses and recommendations in support of the Project's regulatory objectives.

We once again highlight the importance of CIRO's timely development of conforming guidance pertaining and prior to the final approval of the DC Rules, including those relating to rule interpretations and definitions, new account types, CIRO's Approved Person Regime, proficiency requirements and management of significant risk areas, which in our view is a critical factor in the successful implementation of the DC Rules.

In Appendix A we provide answers to the seven questions posed in the Consultation.

## GUIDING PRINCIPLES

The following Principles continue to inform the analysis and discussion of our members concerning the current Consultation and will inform the analysis and discussion of the remaining phases of the Project.

1. Like dealer activities should be regulated in a like manner.
2. Regulatory arbitrage between investment dealers (**IDs**) and mutual fund dealers (**MFDs**) should be minimized.
3. Current MFDs that choose to continue as MFDs should be minimally impacted by any changes to the rules.
4. Rules should be sufficiently flexible to permit a spectrum of business structures and offerings.
5. Where appropriate and practical, principles-based rules that are scalable and proportionate to the different types and sizes of dealers and their respective business models should be adopted.
6. Reviews, audits and examination of dealers should be consistent in the interpretation and application of the rules, regardless of business model.

## CIRO GUIDANCE

IFIC members request that CIRO provide clarity regarding the CIRO guidance that will be used when the Project is complete, and the final DC Rules are in force. Currently, while the CIRO interim rules are in place (i.e. the Investment Dealer and Partially Consolidated Rules (**IDPC Rules**) and the Mutual Fund Dealer Rules (**MFD Rules**)), the Rules Guidance Notes remain effective as guidance for the IDPC Rules and the MFDA Staff Notices remain effective as guidance for the MFD Rules. There is uncertainty about what CIRO proposes to provide as industry guidance for the final DC Rules. IFIC recommends that CIRO also undertake a project, with public consultation, to make conforming changes to the existing interim guidance to create the guidance to be used for the final DC Rules. IFIC urges CIRO to not simply adopt the Rules Guidance Notes for the IDPC Rules (with only conforming changes to address definitions and terminology). Careful consideration should also be given to guidance for the MFD Rules. The guidance should be specifically tailored to the final DC Rules. The final DC Rules should not come into force until conforming consolidated guidance is finalized after public consultation.

## IMPROVING THE EFFICIENCY OF THE CONSULTATION PROCESS FOR ALL CIRO CONSULTATIONS

IFIC thanks CIRO for extending the comment period for Phases 4 and 5 of the Consultation<sup>1</sup>. For consistency, and given the benefits of a 90-day comment period, IFIC urges CIRO to:

- provide stakeholders with a comment period of at least 90 days to review and comment on the aggregated, proposed DC Rules, and
- provide minimum 90-day comment periods for all CIRO consultations in the future, to ensure that stakeholders have the time necessary to carefully consider CIRO's proposals and effectively support the regulatory policy development process.

## IMPLEMENTATION OF THE RULE CONSOLIDATION PROJECT

Given CIRO's confirmation that the DC Rules will be "implemented as a whole with an appropriate transition period"<sup>2</sup>, IFIC urges CIRO to ensure that the implementation period accurately reflects the

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1. Confirmation of the extended comment period was contained within CIRO's Rule Consolidation Project Update, published September 12, 2024  
 2. CIRO - Rule Consolidation Project Update, published September 12, 2024

time required by industry members to develop and implement the necessary associated policies, procedures, technologies and training. Toward that end, IFIC recommends that CIRO consult with the industry prior to determining the implementation period.

## **GUIDANCE RELATING TO DEALER OBLIGATIONS FOLLOWING AN INVESTMENT FUND'S RISK RATING CHANGE**

It is critically important that CIRO interpret and apply each of its rules consistently, regardless of the Dealer Member's business model. This concept is embodied in IFIC's Guiding Principles 1 and 6, cited above.

Based on our discussions with IFIC members however, it appears that CIRO's regulatory expectations of MFDs and IDs differ with respect to their response to an investment fund's risk rating change.

Currently, we understand that if an investment fund's risk rating changes, CIRO expects MFDs to treat the rating change as a material change event, requiring them to:

- contact each client holding the relevant investment fund and advise them of the rating change, and
- discuss and agree on the steps that will be taken to ensure the holding of the relevant investment fund is consistent with the client's risk profile, without considering any of the other holdings in the account (herein referred to as the "**fund-by-fund approach**").

However, IDs are expected to assess the impact of the risk rating change on the overall risk profile of the client's account, considering all of the other holdings in the account. If the ID reasonably determines that the risk rating change affecting the investment fund does not change the overall risk profile of the client's account to become inappropriate, no further action is required. If the investment fund's risk rating change results in the overall risk profile of the client's account changing to become inappropriate, the ID must:

- advise the client of the rating event, and
- discuss and agree on the steps that will be taken regarding the composition of the portfolio so that the overall risk profile of the client's account is appropriate (herein referred to as the "**portfolio approach**").

It appears that both the fund-by-fund approach, used formerly by the Mutual Fund Dealers Association of Canada (**MFDA**), and the portfolio approach, used by the Investment Industry Regulatory Organization of Canada (**IIROC**), are currently in use by CIRO. The use of both approaches creates uncertainty and inconsistency. To ensure clarity and consistency of regulatory expectations going forward, we recommend that the portfolio approach be adopted for all Dealer Members. This approach will help ensure that a client's portfolio is suitable, on a holistic basis, which will eliminate needlessly putting clients, dealers and their representatives through the burdensome exercise of unnecessary client discussions each time a risk rating changes, unless the risk rating materially impacts the overall risk profile of the account.

\* \* \* \* \*

## CONCLUSION

IFIC is pleased to have had this opportunity to provide our comments on the Consultation. Please feel free to contact me by email at [amitchell@ific.ca](mailto:amitchell@ific.ca). I would be pleased to provide further information or answer any questions you may have.

Yours sincerely,

THE INVESTMENT FUNDS INSTITUTE OF CANADA



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## APPENDIX A

### Question #1 – Definition and application of “investment product”

- a. Will the revised definition, and application of the term "investment product" provide additional clarity to the scope of Dealer Member obligations to clients?
- b. What additional investment products should we consider obtaining Board approval to include in this definition?
- c. Are there different products that should be added for different regulatory purposes?

### IFIC Response:

- a. We support CIRO's proposal to replace the defined term 'investment' with 'investment product' to clarify which regulatory obligations apply to investment products and which apply to other products, provided that CIRO's Board is required to and will:
  - request stakeholder comments before proceeding with any changes to the list of investment products, and
  - obtain Canadian Securities Administrators (**CSA**) approval of any changes to the list of investment products.
- b. We do not recommend any other product for approval by the CIRO Board as an investment product.

We do not recommend adding any other products to the definition of "investment product" for regulatory purposes. For products not defined as "investment products" and primarily regulated by a non-securities regulator, we suggest that CIRO defer to the primary regulator overseeing the product to avoid confusion about regulatory authority or requirements.

## Question #2 – Applying CFO requirements to MFDs

We recognize that requiring MFDs to appoint a CFO may be a significant material change to the governance and resourcing requirements of many such dealers.

We are seeking feedback on several points regarding this proposal:

- a. For MFDs that do not support the implementation of this requirement (and in particular, any MFD that does not currently have a CFO), we inquire as to who, at an individual level, fulfills their existing financial obligations under MFD Rule section 3 (which broadly assigns the obligations to the 'Member' instead of an individual), including a description of who oversees financial risk to clients and the organization on a regular (i.e. daily) basis.
- b. To what extent, and on what basis, should the proposed CFO requirement reflect the Rule Consolidation Project objective of scalability? For instance, should the requirement for a Dealer Member to designate a CFO only apply to MFDs in certain scenarios, such as:
  - Based on a certain minimum AUM (and what should that threshold AUM be),
  - If an MFD has a corporate governance and/or Executive structure beyond a single UDP/CCO, and/or
  - Based on the complexity of products (ETFs) or services offered (and if so, which products and/or services require the financial expertise of a CFO)?

Whether there are significant concerns regarding the potential scarcity of CFO candidates in the mutual fund industry and/or the anticipated time horizon to hire a CFO candidate at an MFD.

### IFIC Response:

- a. MFDs that have not appointed a Chief Financial Officer (**CFO**) typically divide the role and its operational and regulatory responsibilities between a Financial Controller (**Controller**) and a senior Approved Person (AP), usually the Ultimate Designated Person (**UDP**).

The Controller is responsible for overseeing the MFDs' financial operations, including financial reporting, budgeting, and risk management. They also participate in the financial decision-making process. While Controllers are not required to have an accounting designation, some Controllers may possess one of the recognized accounting designations.

Controllers are not registered as Approved Persons and do not have regulatory accountability for the MFDs' compliance with CIRO's financial operations regulations, such as the firm's capital position and financial reporting. Regulatory accountability for the dealer's financial operations lies with the UDP, as the senior Approved Person.

- b. This proposal, which requires all MFDs to appoint a CFO regardless of size, business model, governance structure, or operational complexity, assumes that all MFD operations need a qualified CFO to comply with CIRO's financial operations regime. We respectfully believe this assumption is incorrect, leading to a proposal inconsistent with the Rule Consolidation Project's goal of scalability.

We recommend CIRO use a principles based approach, revising the proposal to apply only to MFDs that clearly require a qualified CFO, based on MFDs' assessments of relevant factors, such as:

- **Corporate Governance Structure:** Is governance centralized within a few APs (e.g., UDP and CCO), or decentralized?
- **Executive Structure:** Is management authority concentrated among a few executives, or is it decentralized across a broader group?
- **Business Model:** Is the MFD's business model stable, or is it dynamic and growth-

oriented, requiring more sophisticated financial leadership?

- **Products and Services Offered:** What is the complexity of the products and services? For example:
  - Offering margin accounts creates regulatory and operational challenges that necessitate a qualified CFO.
  - Selling ETFs, which are more complex, requires robust controls that would benefit from CFO oversight.
- **Size, Scale, and Location:** Does the MFD operate from a single office, or multiple offices across cities or provinces? A more complex operation suggests a CFO is needed.

Lastly, while an approach that reflects CISO's current rule allowing IDs to retain a part-time CFO could alleviate some operational impacts, this option should not be seen as a complete solution to the concerns raised in our response.

- c. We believe this proposal will negatively impact all CISO dealer members due to the increased demand for qualified CFOs and the probable scarcity of candidates, which may result in:
- Longer recruitment periods for new or replacement CFOs,
  - Higher costs for identifying, recruiting, or retaining qualified CFOs, and
  - Ongoing cost increases for CPA-qualified CFOs due to competition from accounting and other industries.

We expect these challenges to persist for several years, as it will take time for the CFO talent pool to grow.

Given these issues, we urge CISO to:

- Implement an extended transition period of at least 2 years to allow MFDs to adapt, and
- Consider grandfathering individuals with senior or executive finance experience who demonstrate the skills and judgment required for the CFO role within an MFD.

### Question #3 – Proficiency requirements and the Approved Person regime for UDPs of MFDs

To avoid an overly burdensome approval process, we proposed that MFD sponsored individuals that are registered in the appropriate registration category under securities legislation should be automatically approved as an Approved Person under the DC Rules. (i.e. Grandfathering)

However, an important distinction exists between the CCO and Dealing Representative categories, which rely on a review process by relevant securities regulatory authorities and minimum proficiency requirements to obtain registration, versus the MFD UDP, which is also reviewed but not required to meet minimum proficiency requirements.

- a. Given that the UDP has the highest level of liability and oversight in a Dealer Member, is it reasonable to impose the CIRO approval process as is currently set out in the IDPC Rules (including the successful completion of courses, examinations, and minimum experience) in addition to the registration required by securities legislation?
- b. If the answer to the above is 'yes,' this may be disruptive to MFDs whose UDPs do not currently meet the proficiency requirements set out in the IDPC Rules. To what extent is it appropriate to exempt these existing UDPs from these requirements, or alternatively, to provide a longer time horizon (beyond the general implementation date) for them to complete their proficiency requirements?

### IFIC Response

- a. As we note in the Guiding Principles section of this comment letter, we believe that “like dealer activities should be regulated in a like manner”. Given that MFD UDPs and ID UDPs have very similar regulatory roles, it is reasonable to apply the current IDPC Rules-based (**IDPC**) approval process to MFD UDPs, requiring successful completion of courses, examinations, minimum experience requirements, and registration.
- b. Existing MFD UDPs are currently required to complete continuing education as mandated by MFD rules. They generally require comprehensive operational and regulatory experience, as well as a solid understanding of regulatory requirements. Given this, it is unclear whether imposing the IDPC approval process on current MFD UDPs would materially reduce risk to the investing public. Therefore, we recommend that CIRO approve (i.e., grandfather) existing MFD UDPs under the IDPC approval process. Additionally, we suggest that CIRO recognize the ongoing validity of any grandfathered approval if a grandfathered MFD UDP transitions to a new UDP role at another MFD.

If CIRO does not accept our proposal to grandfather existing MFD UDPs, we urge CIRO to allow these individuals a reasonable, extended period to complete the proposed proficiency requirements. However, since the full details of the proficiency requirements are not yet clear, it is difficult to determine an appropriate extension period currently. We recommend deferring this issue until a final decision has been made regarding the grandfathering of existing MFD UDPs. If CIRO ultimately requires existing MFD UDPs to meet the proposed proficiency requirements, we advise that CIRO consult with the industry once the detailed proficiency requirements are finalized, at which point an appropriate extension can be determined.



#### **Question #4 – Implementation for existing (unregistered) Approved Persons of Mutual Fund Dealers**

With respect to the categories of Approved Persons of MFDs that are not subject to a registration requirement under securities legislation, we have generally proposed these Approved Persons conform to CRO's Approved Person regime and corresponding proficiency requirements. Our view is that these roles have significant oversight responsibilities that justify this potential additional regulatory burden on MFDs.

However, the same rationale may not apply for Directors. We expect that directors of MFDs who were not previously subject to proficiency requirements may not be 'actively engaged' in the activities of the business of the MFD and do not play an operational, oversight nor managerial role in the dealer's business. Under the current proposals in Phase 4, these MFD Directors would be subject to a CRO approval process and net-new proficiency requirements.

- a. To what extent would it be appropriate to grandfather the existing Directors of MFDs into the Approved Person regime?
- b. Please advise if there are significant concerns regarding this approach, particularly regarding the lack of minimum proficiency requirements of existing MFD Directors and whether this could undermine investor confidence in MFDs as compared to IDs.

#### **IFIC Response:**

- a. We believe CRO should grandfather all current Directors of MFDs into the Approved Person regime, given the lack of historical regulatory issues with individuals currently serving as Directors. Additionally, we recommend that CRO recognize the ongoing validity of the approval if a grandfathered Director assumes a new Director role at another MFD.

While we support grandfathering existing Directors, we also endorse CRO's proposal to include future MFD Directors in the Approved Person regime. This aligns with the principle that similar dealer activities should be regulated in a similar manner and demonstrates CRO's commitment to enhancing its proficiency regime.

- b. IFIC members believe that grandfathering existing Directors into the AP regime would not pose additional risk to the investing public or raise significant concerns among investors. Therefore, we have no material objections if CRO decides to grandfather MFD Directors into the AP regime. Our position is based on:
  - Our shared view with CRO that Directors of MFDs, not historically requiring registration, have not been "actively engaged in the activities of the business" and do not play an operational or managerial role in the dealer's business, and
  - The long history of investors interacting with MFDs under the existing proficiency regime.

**Question #5 – Transition period for Approved Person categories where new requirements are introduced or existing requirements have been materially changed**

We recognize that we have proposed significant changes, including net-new Approved Person categories and corresponding proficiency obligations, to the Approved Person regime for MFDs. As a result, existing Approved Persons sponsored by mutual fund dealers, as well as individuals who are not currently considered Approved Persons but will be caught by the proposed DC Rules, may be required to attain additional proficiencies. This may be a time-consuming process and might result in individuals incurring additional professional expenses.

Given the above considerations,

- a. Should the proposed proficiency requirements for MFDs' Approved Persons be subject to an extended transition period beyond the general effective date for the DC rules?
- b. if so, what is an appropriate extended transition period?

**IFIC Response:**

- a. Given the time and resource commitments required from both dealer members and affected individuals to meet the proposed new or incremental proficiency requirements, we recommend extending the transition period for MFDs' Approved Persons beyond the general effective date of the DC Rules.
- b. The number and complexity of ongoing regulatory initiatives regulators will continue to create resourcing challenges for MFDs, IDs, and many of their personnel. For firms that operate as both MFDs and IDs, the training and operational challenges arising from this Consultation's proficiency proposals for MFDs, along with CRO's ongoing Proficiency Model initiative for IDs, will be even more demanding. Given these factors, we recommend that CRO extend the transition period for MFDs' Approved Persons by one year beyond the general effective date of the DC Rules.

**Question #6 - Prohibition on accepting certain positions of control or authority over client affairs**

- a. Does the addition of the prohibition on an Approved Person or employee accepting a position of power of attorney, trustee, executor or otherwise having full or partial control of the affairs of a client have implications in respect of the relationship between the client and the Approved Person or employee?
- b. Should there be exceptions to this prohibition, and if so, under what circumstances?

**IFIC Response:**

- a. The proposed amendments to IDPC Rule section 3115, which would expand the rule to prohibit dealer member employees from accepting or exercising control or authority over a client's financial affairs, could impact on the relationships between clients and Approved Persons or employees they interact with. Currently, employees of MFDs are not prohibited from taking on such control or authority. Therefore, it is reasonable to assume that:
  - Many MFD employees have accepted or are currently exercising control or authority over a client's financial affairs (**Control Cases**), and
  - MFDs likely have limited or no information about these Control Cases, as employees are not required to disclose or obtain approval from the dealer.

Given these factors, as well as the practical and potential legal challenges in identifying and unwinding these Control Cases, we recommend that the rule proposal be revised to clarify that these amendments will apply only on a "go-forward" basis.

- b. Although IDPC Rule 3115 currently applies to IDs' Approved Persons and employees, it is unclear whether the principle "like dealer activities should be regulated in a like manner" should require CIRO to extend the Rule's scope to include MFDs' employees. IFIC members believe that while the prohibition in Rule 3115 is necessary and appropriate, expanding the scope to cover employees beyond Approved Persons is unnecessary. The prohibition addresses the risk of misuse of influence by individuals in advisory roles who may have developed significant influence over clients. Extending this rule to unregistered employees, who have limited client interaction and unlikely influence, seems unwarranted.

In support of this view, we point to FINRA Rule 3241, which is similar to Rule 3115 but is limited to registered persons. FINRA's rule also allows registered persons to notify their firms of proposed changes, with the firm assessing the circumstances and approving or denying the request.

Given the MFDA's longstanding approach to limiting this conflict risk to Approved Persons, and the precedent set by FINRA Rule 3241, we strongly urge CIRO to:

- Limit the scope of the proposed revision to Rule 3115 to Approved Persons only, and
- Consider allowing Dealer Members to approve exemption requests from Approved Persons based on a reasonable assessment of individual circumstances.

**Question #7 – Prohibition on being named as beneficiary**

Is it appropriate to prohibit an employee or Approved Person from accepting the status of a beneficiary of a client's estate or receiving a bequest from a client's estate upon learning of such status unless they are a member of the client's immediate family?

**IFIC Response**

Consistent with our comments in response to question #6 above, we believe the prohibition on beneficiary status in Rule 3115(vi) is overly broad. The absolute ban on receiving bequests from a client's estate could unduly restrict a client's informed ability to distribute their estate as they see fit. Given these concerns, we recommend that CISO:

- Limit the scope of the proposed revision to Rule 3115(vi) to Approved Persons only, and
- Consider allowing Dealer Members to approve exemption requests from Approved Persons on a case-by-case basis, based on a reasonable assessment of the circumstances.