

October 8, 2021

VIA EMAIL

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

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**Re: CSA Position Paper 25-404 – New Self-Regulatory Organization Framework  
(the “Position Paper”)**

The Canadian Advocacy Council of CFA Societies Canada<sup>1</sup> (the “CAC”) appreciates the opportunity to provide the following general comments on the Position

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<sup>1</sup> The CAC is an advocacy council for CFA Societies Canada, representing the 12 CFA Institute Member Societies across Canada and over 19,000 Canadian CFA Charterholders. The council includes investment professionals across Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. Visit [www.cfacanada.org](http://www.cfacanada.org) to access the advocacy work of the CAC.

CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion of ethical behavior in investment markets and a respected source of knowledge in the global financial community. Our aim is to create an environment

Paper. We are supportive of the CSA's intent to establish a new enhanced SRO and consolidate the two current investor protection funds into a single, independent fund as part of a new SRO framework (the "**New SRO**"). Our comments relate to areas within the Position Paper where we are keen to engage and provide further input as they progress throughout Phase One, including governance matters, investor interests and representation, proficiency requirements and conduct and enforcement matters.

### **Governance**

In our initial 2020 response to CSA Consultation Paper 25-402, *Consultation on the Self-Regulatory Organization Framework*, we focused on potential governance improvements that could be made to support an SRO's public interest mandate. Throughout the design of the governance structure for the New SRO, it is imperative that the public interest be the primary focus of the core design principle. We believe this begins with considerations such as a majority of independent directors, an independent Chair and the other suggestions set out in the Position Paper. We are particularly supportive of the suggestion that the New SRO would be required to develop diversity and inclusion policies to increase underrepresented groups on the board. It is important, however, that similar structural requirements be set for significant decision-making committees as well as the overall board of the New SRO. Some of these concerns may be remedied to the extent the proposal transfers proceed of current district council regulatory decision-making functions to the board and staff of the New SRO.

### **Investor Representation and Integration of Investor Interests**

We are supportive of the proposed formal investor advocacy mechanisms for the New SRO, in order to help ingrain the consideration of investor concerns into its fabric, including through a new investor advisory panel. It is important that consideration of investor perspectives and benefits form an integral part of all regulatory initiatives and are reasonably weighed in economic cost-benefit analysis. Too often, concepts like public trust and investor protection are underweighted against more easily quantifiable industry implementation costs in regulatory analysis. This demands thoughtful counterweights in governance design to ensure a lack of systemic bias against useful but costly regulatory initiatives.

It is important that the New SRO and any committees/functions with significant decision-making authority be held to transparency standards that serve both the CSA and stakeholders such as industry and the public. Investors and other stakeholders must have confidence that decisions by the New SRO are made in the absence of undue influence of industry or specific stakeholder constituencies. The New SRO should be subject to similar transparency and public reporting principles imposed on statutory

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where investors' interests come first, markets function at their best, and economies grow. There are more than 178,000 CFA Charterholders worldwide in over 160 markets. CFA Institute has nine offices worldwide and there are 160 local member societies. For more information, visit [www.cfainstitute.org](http://www.cfainstitute.org).

regulators, and complaints and concerns about the New SRO should be handled within the CSA framework.

### ***Proficiency***

As we first raised in our 2020 letter, it remains critical for the New SRO to be a driver of professionalism in the investment industry and robust continuing education standards. Individuals registered with members of the New SRO should be subject to meaningful (and uniform) continuing education requirements that focus not on the specifics of a product or revenue generation/practice management, but rather the skills needed to deliver professional, competent, ethical and effective investment and financial advice to all Canadians. We would also like to see continuing education reframed across the New SRO with influence from ongoing policy work on competency frameworks, focused on skills, specific competencies and professionalism, de-emphasizing specific products sold by a particular registrant.

Without further detail and consultation, we would not necessarily support a proposal for more nuanced proficiency-based registration categories, as adding additional registration categories might only add to existing investor confusion on licensing and the scope of financial advice. We agree with the statement in the Position Paper that individual registrants could be better equipped to provide more holistic advice to their clients, but believe that increased baseline proficiency standards for all registrants is the path to progress.

### ***Conduct and Enforcement***

It is proposed that the new Recognition Order would require, where possible, transparency in enforcement notices with respect to the processes for assessing firm supervision and reasons for disciplinary decisions. As we have suggested in the past, additional transparency with respect to enforcement proceedings is sorely needed, particularly with respect to the impact of past decisions (i.e., precedential value) and mitigating circumstances. The root causes of systemic compliance issues within specific firms, relating to specific recidivist individuals, and those that are prevalent across industry and/or segments thereof must be investigated and addressed, rather than addressing one-off issues symptomatically on a reactive basis.

### ***Additional Comments***

With respect to the market surveillance mandate of the New SRO, we believe the current functions performed by IIROC work well, and that the transition of this team and its expertise to the New SRO should yield a positive regulatory outcome. We continue to encourage strategic and operational cooperation and integration (ostensibly led by and operationalized by the New SRO) between the current market surveillance regulatory functions and related functions at the CSA, particularly to address systemic risk concerns. We believe there remains some room for incremental improvement as

regulation and rules of the New SRO are designed and implemented, particularly with respect to the need to broaden powers across Canada to examine records of additional market participants.

We have previously commented extensively on the various dispute resolution mechanisms in the financial industry. Investors, particularly retail investors, are confused about their rights and how to escalate complaints made about their advisors. We believe the industry demands a single, empowered dispute resolution body, with clear guidelines for registrants on how complaints are dealt with. In the event it is not possible to consolidate the dispute resolution mechanisms throughout the financial services industry into one body, it is important that the various complaint handling and dispute resolution services/ombudsmen be mandated to share data with one another so that there is a complete picture of where issues are arising and where there are misunderstandings between advisors and their clients. Such data could be broadened to include information about complaints that are dealt with solely within a firm for further analysis, and regulatory action on systemic issues. The process should be the same for all investors, regardless of the category of registrant with whom the public interacts. Any ombudsperson should be empowered to investigate and opine on potential solutions to systemic issues that have been identified through complaints and disputes.

While we appreciate that the potential consolidation of other registrant categories into the regulatory purview of the New SRO will be examined as part of Phase II of the framework, we continue to question whether integration of such categories has any clear benefit to any stakeholder. Such a move would be disruptive to business operations without any clear public benefit, and the CSA's principles-based framework functions well in practice for these registrant categories in our view. Absent a clear and present need, we question whether the (to date) rules-based approach of an SRO to the variety of business models that exist for portfolio managers and exempt market dealers is appropriate or feasible. There are already very high conduct standards imposed directly by the CSA on the portfolio manager (and investment fund manager) category, and we believe similar standards should be first examined for application in the context of Phase I of the New SRO, before consideration is made of expanding its registrant category coverage in a Phase II.

### **Concluding Remarks**

We fully support efforts to create a new SRO framework that has a clear public interest mandate and focuses on investor protection and the promotion of public confidence in capital markets. As noted above, it is important that the governance structure, avenues for investor input, professionalism and investor redress mechanisms for the New SRO all have at their core the common goals of accountability and the public interest. We would welcome direct and ongoing engagement to the greatest extent that it's useful and productive with the IWC and applicable CSA working groups as they tackle the various elements of organizational and regulatory design and implementation of the New SRO.

We thank you for the opportunity to provide these comments and would be happy to address any questions you may have. Please feel free to contact us at [cac@cfacanada.org](mailto:cac@cfacanada.org) on this or any other issue in future.

(Signed) *The Canadian Advocacy Council of  
CFA Societies Canada*

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