



December 18, 2023

VIA EMAIL

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Re: CIRO Bulletin 23-0147 – Rules Bulletin – Request for Comments – DC Rules – Rule Consolidation Project – Phase 1 (the “Consultation”)

The Canadian Advocacy Council of CFA Societies Canada (the “CAC”)¹ commends the Canadian Investment Regulatory Organization’s (“CIRO”) ongoing commitment to stakeholder engagement and transparent process, and appreciates the opportunity to comment on the Consultation.

The following are our responses to some of the questions in the Consultation requiring specific comment.

Question #1 – Delegation

As part of the Phase 1 Proposed DC Rules, we have adopted existing IDPC Rule subsection 1103(1) relating to delegation but have not yet made a final decision on the approach we should take in drafting the final general rule requirement relating to delegation.

¹ The CAC is an advocacy council for CFA Societies Canada, representing the 12 CFA Institute Member Societies across Canada and over 20,000 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 to access the advocacy work of the CAC.

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Which of the following rule drafting approaches do you think we should take and why? Should we:

- ***generally permit the use of delegation, subject to specific prohibited exceptions itemized elsewhere throughout the rules?***

or

- ***generally prohibit the use of delegation, subject to specific permitted exceptions itemized elsewhere throughout the rules?***

We would be supportive of continuing the current structure as set out in the IDPC Rules, i.e., to generally permit the use of delegation, subject to specific prohibited exceptions listed elsewhere in the rules. In our view, drafting in the positive form provides greater clarity and better conveys whether an activity is permissible and generally available. As a related concept to CIRO's commitment to develop the CIRO Dealer and Consolidated Rules in plain language, in order to assist the reader we would like to see a reference to the other rules that would impact (or be impacted by) the proposed changes, and for this drafting convention to apply generally for any other similar such rules that are meant to be read with reference to other rules. We believe that employing such a drafting device would promote compliance and assist in preventing client harm.

Question #2 – Temporary discretionary accounts

We have determined that there is no longer a need to make temporary discretionary account arrangements available to clients and will be proposing to eliminate this investment dealer account type as part of future phase of the Rule Consolidation Project.

Do you agree with the proposed elimination of this investment dealer account type? If not, please provide reasons why this account type should be retained.

We would be supportive of the decision to eliminate temporary discretionary accounts. We agree that these accounts had more value at a time where methods for client communication were more limited. With the more recent advances in communication technology, along with greater uptake of these methods by the general public, there is less of an impetus for such accounts. Additionally, in our view, fully managed accounts, under the care of a fully proficient and monitored securities registrant, are preferable for clients that are intermittently unavailable, as they provide greater certainty on the expectations between the parties and lead to greater client satisfaction as they are not subject to the same transience, and subject to more appropriate oversight and duties given the circumstances.

Question #3 – Account types that can be offered by Investment Dealer Members and Mutual Fund Dealer Members

Under the Phase 1 Proposed DC Rules, the following account types will be available to Dealer Members:

- ***advisory account (available to both Investment Dealer Members and Mutual Fund Dealer Members)***



- *direct electronic access account (available only to Investment Dealer Members)*
- *managed account (available only to Investment Dealer Members)*
- *order execution only account (available only to Investment Dealer Members)*

Should we consider proposing to allow Mutual Fund Dealer Members to offer managed accounts and order execution only accounts as part of a future Rule Consolidation Project phase and provided they comply with requirements that are materially the same as those that apply to Investment Dealer Members? Any such changes would have to be developed in conjunction with the CSA.

We would be supportive of permitting Mutual Fund Dealer Members to offer order execution only accounts. This would increase the attractiveness of this dealer registration category, and the increase in service offering types by such members would be in keeping with the demand of clients. Mutual funds also tend to have more inherent safeguards that would make them particularly suited for order execution only accounts and mitigate the potential for investor harm. We have acute concerns relating to registrant proficiency and account oversight should managed accounts be contemplated within the Mutual Fund Dealer Member community, which prevents us from endorsing this concept.

Question #4 – Regulatory financial filing forms

The existing IDPC and MFD rules require the completion and submission of two different regulatory financial filings forms (both referred to as Form 1). As part of a future Rule Consolidation Project phase, a determination will need to be made as to whether we maintain two different regulatory financial filing forms or one going forward. Do you think we should maintain two different regulatory financial filing forms or one for both categories of CIRO Dealer Members? Why?

We are of the view that simplicity and comparability as to registrant financial condition should be encouraged, and would therefore support a single filing form in the future, with category-specific sections/questions as-needed, but with core financial information captured in as homogenous fashion as possible for easier analysis and comparability by regulators.

Question #6 - Categorization of clients

As part of a future phase of the Rule Consolidation Project we will need to determine whether the use of the “institutional client” / “retail client” categorization should be extended to Mutual Fund Dealer Members and, if so, whether all Dealer Members should be given the option of treating all clients as “retail clients” to avoid the burden of having to categorize clients.

Should all Dealer Members have the options of either: (1) categorizing their clients as either an “institutional client” or a “retail client” and complying with the rules relevant to each client type, or (2) treating all clients as “retail clients” and complying with the rules relevant to retail clients? Why or why not?



We believe there are material benefits to both dealers and clients in maintaining client segmentation, but acknowledge there could be instances where certain retail-only business models may be able to simplify their policies and account oversight by considering all clients to be retail clients, and therefore subject to more robust client treatment, duties and disclosure. So long as clients are not inappropriately categorized such as to compromise the dealer's duties to the client in any way, we're in favour of permissive options to dealers that suit their business models.

Concluding Remarks

We acknowledge the challenge facing CIRO in this consolidation project and have found CIRO's strong commitments to process transparency, clear timelines, and engagement with stakeholders, and attention to detail with respect to drafting concerns, to be particularly commendable. We are generally supportive of any drafting techniques that assist the reader, and as such, we are in favor of using the positive form where possible. We are also generally in favor of harmonization efforts that lead to better client outcomes and that emphasize client choice, and that are accommodative of a variety of dealer business models, provided investor protection is not compromised.

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 on this or any other issue in the future.

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

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