

September 4, 2020

To: Members of Ontario's Capital Markets Modernization Taskforce

Submitted by email: CMM.Taskforce@ontario.ca

Subject: Consultation Report – Modernizing Ontario's Capital Markets

Independent Financial Brokers of Canada (IFB) welcomes the opportunity to comment on the policy proposals published by Ontario's Capital Markets Modernization Task Force in July. We acknowledge the extensive work done by the Task Force over the short period of time since it was established in February 2020. We share the view that improvements can be made to the existing capital markets framework, but importantly, this framework must be positioned to adapt to the demands of a vibrant, evolving, and competitive market.

Independent Financial Brokers of Canada

IFB is a not-for-profit, professional association which has been dedicated to representing the interests of self-employed, licensed financial advisors for over 35 years.

IFB members are provincially licensed financial advisors and planners who provide advice and guidance to individuals, families, and businesses in communities across Canada. Many IFB members hold multiple financial licenses and conduct business in various provincial/territorial jurisdictions. The majority of IFB members are mutual fund registrants and/or life insurance licensees who are independent owner/operators of a small or medium-sized financial practice, typically in their home community.

IFB provides a unified voice for these independent advisors by providing advocacy, and representation on their behalf to government, regulators, and industry stakeholders. In addition, IFB supports the professional needs of its members, and the financial services industry more broadly, by offering high-quality in-person and online education, a comprehensive professional liability program, and compliance/regulatory support. As a condition of membership, IFB members are required to agree to conduct themselves in accordance with our Code of Ethics and Statement of Principles on an annual basis.

While we acknowledge that any significant change to the regulation of Ontario's capital markets will affect all stakeholders, we have focused our comments on the policy proposals that are likely to have the most direct effect on IFB members.

Our comments

IFB supports the Taskforce's underlying objectives to improve upon the current regulatory structure of Ontario's capital markets and reduce the regulatory burden for firms, advisors, and investors. As an organization which represents smaller market participants, we see the burden that an increasingly onerous regulatory environment places on these individuals and firms, pushing up their costs and reducing their ability to compete with larger integrated financial entities.

We note, however, that some of the Task Force's proposals address issues that are also under consideration by other bodies which, if successful, would result in changes which would be national in their effect.

Specifically, the Canadian Securities Administrators' (CSA) published a consultation to review the current self-regulatory organization framework in June, and which many of the same industry stakeholders responding to the Task Force's proposals will also be responding to in October. Similarly, there are other proposals which overlap with the CSA's published priorities. And, work continues on the Cooperative Capital Markets Regulatory system, which Ontario is a participant in.

It has been our view, as set out in past regulatory and policy submissions, that national solutions which level the playing field for investors, firms, and advisors - regardless of the jurisdiction in which they conduct their financial transactions- are preferable. Canada's securities regulatory structure is complex, with 13 statutory regulators and 2 national SROs - IIROC and the MFDA. Jurisdictional differences can create barriers and burden for market participants and investors.

2.1 Improving the Regulatory Structure

2.1.2 Separate the regulatory and adjudicative functions at the OSC

IFB sees merit in separating the regulatory and adjudicative functions in line with the more modern approach to corporate governance. The establishment of the Financial Services Regulatory Authority of Ontario (FSRA) follows that model.

IFB has been involved since the early stages of the transition from FSCO to FSRA and continues to serve as a member of FSRA's [Stakeholder Advisory Committee for Life and Health Insurance](#). This model of formally engaging industry stakeholders on an ongoing basis with the Board of Directors, and FSRA management, ensures that FSRA receives broad input from a variety of perspectives. Moreover, it has worked well to establish an open, collaborative, and respectful engagement that we have long felt has been missing with securities regulators. Financial advisors have not been well represented in the current governance structure. Securities firms, dealers, investment manufacturers do not speak for advisors. IFB would welcome further discussion on this matter.

We encourage the Task Force to review the Terms of Reference of the FSRA Stakeholder Advisory Committees with a view to recommending the creation of a similar structure and improve industry collaboration.

Self-regulatory organizations (SROs)

2.1.3 Strengthen the SRO accountability framework through increased OSC oversight

In our view, many of the proposals for improved governance of the SROs have merit, but it is unclear to us how they could be achieved by without the participation of the other CSA members. The SROs as national bodies rely on recognition orders from each provincial/territorial regulator. For example, we question how any Ontario-only proposal, such as a veto on key appointments, could be managed.

We suggest a solution would be for the OSC to make it a priority to work alongside its CSA counterparts to improve the current governance structure, based on the Taskforce's proposals. We further agree that SRO executives should be held to a public interest mandate as part of their job description. This is central to performing their duties and overseeing a mandate that is aligned with the public interest.

We think the current system requiring the SRO's to publish for comment their strategic and regulatory priorities garners stakeholder input. However, what is missing in our view, is the onus on the SRO to reflect in its spending and priorities the input received.

Each SRO has a CSA member that acts as its Principle Regulator and issues an oversight report. The Taskforce is considering the creation of an ombudsperson service to address complaints from SRO member firms about services received from their respective SRO. We agree that if implemented it should serve a separate function, distinct from regulatory decisions, so as not to function as an appeals process.

An ombudsperson service may be an attractive solution for some firms, especially smaller independent firms in the MFDA channel, who have experienced dissatisfaction with their regulator and feel they have no recourse. We reiterate our comments under 2.1.2, that establishing an open, collaborative, and respectful engagement with those it regulates is a win-win for all.

2.1.4 Move to a single SRO that covers all advisory firms, including investment dealers, mutual fund dealers, portfolio managers, exempt market dealers and scholarship plan dealers

IFB welcomes initiatives which will streamline business operations, the regulatory environment and access to capital markets for all participants, while preserving investor protection. The current SRO structure with its different registration categories, rules and compliance obligations is fragmented and often confusing for investors. One potential remedy to address this is to merge the MFDA and IIROC into a single consolidated SRO. This solution has been proposed by various stakeholders, including the Taskforce, albeit in different forms. It is currently out for public comment by the CSA.

IFB believes there are considerable benefits for firms and investors that could be achieved by consolidating IIROC and the MFDA. We encourage securities regulators to move forward with this proposal, particularly in light of the recently published Deloitte report¹ which indicates cost savings of some \$500m could be achieved over the next 10 years.

Adopting a phased approach to merge IIROC and the MFDA into a new SRO is the most efficient and timely solution. Care must be taken that cost savings and efficiencies are accessible to all sized firms, not just those dually regulated.

Given the size and power of this new SRO, an enhanced accountability framework will be essential. It must be reflective of the many types of SRO member firms that will be governed by it, and include strong investor representation.

IFB will be responding under separate cover to the CSA consultation.

¹ Deloitte LLP: **Investment Industry Regulatory Organization of Canada**. An Assessment of Benefits and Costs of Self-Regulatory Organization Consolidation. July 2020. <https://www.iiroc.ca/industry/sro-proposal/Pages/default.aspx>

2.2 Regulation as a Competitive Advantage

2.2.9 Transitioning towards an access equals delivery model of dissemination of information in the capital markets, and digitization of capital markets

IFB supports the access equals delivery model, provided investors retain the ability to choose their preferred method of delivery. Paper-based copies of prospectuses and other lengthy materials are often unwanted and unread and are wasteful in terms of cost and resources.

However, there may be instances whereby physical delivery of these documents is preferred. Some investors may have limited access to the internet, are uncomfortable with electronic messages received in an encrypted format, or who simply prefer to receive written documents. Investors who choose one method of delivery over another should be able to change this preference at any time by providing notice. We anticipate that investors would be informed of any specified lead time for such changes to become effective.

2.2.14 Introduce additional Accredited Investor (IA) categories

IFB supports an open and competitive marketplace where investors can choose how and what they want to invest in. Exempt markets are an important means of raising capital for non-traditional investments.

The addition of a proficiency category to qualify for the AI exemption makes sense. However, the exempt market has unique characteristics, the most significant of which is its higher risk for investors. It's important that investors are apprised of and understand this risk. At the same time, the AI category has sometimes been misunderstood and insufficiently documented when a complaint is lodged. For this reason, we see successful completion of the Exempt Market Products exam, for example, as more directly relevant than completion of the Canadian Securities Course.

The Task Force suggests that if an individual has met the proficiency standard to recommend an investment to other investors the individual should be able to invest in such products for him/herself. In such a case, the individual would be licensed and subject to regulatory oversight in addition to having attained the appropriate standard of proficiency. The Task Force may want to clarify whether it is sufficient to have attained the proficiency required for registration, or if it contemplates a situation where an individual simply takes a course, like the CSC, for personal reasons.

2.3 Ensuring a Level Playing Field

2.3.17 Increase access to the shelf system for independent products

As an association which represents and advocates on behalf of those who provide independent advice, IFB welcomes the proposal to increase the availability of independent products on dealer shelves.

The investment industry in Canada has been dominated by bank-owned dealers. The Task Force estimates that 80 percent of the distribution of investment products to investors is through bank-owned shelf distribution channels. IFB shares the concern of the Task Force and others that bank-owned dealers incentivize the sale of proprietary products and restrict access for independent product manufacturers.²

² Capital Markets Modernization Taskforce: consultation report, page 17.

IFB has supported the Client Focused Reforms (CFRs) that will require these dealers to demonstrate that their practices are not biased toward the sale of proprietary products. IFB has often stated in past submissions that the sales incentives and conflicts related to the sale of proprietary products, and in integrated financial firms with a large shelf of proprietary products, must be acknowledged by regulators and processes put into place to ensure consumers are treated fairly. This was the subject of the Financial Consumer Agency of Canada's investigation and subsequent report that uncovered widespread sales pressures and practices faced by staff in Canadian banks³. Given the dominance of the big 6 banks in the banking and investment industry, this remains an area of concern.

The Task Force proposals to build on the CSA's CFRs, such as requiring enhanced reporting and additional documentation related to conflicts of interest, are positive in our view. We do not generally support the idea of introducing a new label, such as 'salesperson', for those selling proprietary products. Our view has been that an advisor's title should reflect their registration category. A better approach is to leverage the CFR proposals to enhance disclosure to consumers, so they are made aware that they are being offered only proprietary products.

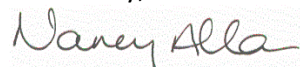
2.6 & 2.7 Modernizing Enforcement and Enhancing Investor Protection

As noted at the outset of this response, many IFB members are regulated by the MFDA. A smaller number are regulated by IIROC. While we read with interest the various sections pertaining to improving the enforcement powers of the OSC and the corresponding balancing of rights for those facing an OSC investigation, commenting on these proposals is outside of our purview.

Similarly, changes to the mandate of OBSI, are better addressed by other commenters as, again, few IFB members would be involved in an OBSI complaint. We do note, however, that IFB offers a comprehensive and affordable individual and corporate professional liability program for life and mutual fund licensees. An advantage for an investor pursuing restitution under this program is that it is provided at no cost to them and avoids legal costs.

IFB appreciates the opportunity to provide our comments and would be pleased to expand upon them or consult further with the Taskforce as it moves toward finalizing its recommendations. Should you wish to do so, please contact either myself or Susan Allemang, Director Policy & Regulatory Affairs (email: sallemang@ifbc.ca).

Yours truly,

A handwritten signature in black ink that reads 'Nancy Alla'.

Executive Director

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³ <https://www.canada.ca/en/financial-consumer-agency/programs/research/bank-sales-practices.html>