

La voix au Québec de l'Institut des fonds
d'investissement du Canada

ERIC HALLÉ
Chair of the Board of Governors

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BY EMAIL

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RE: CFIQ comments on the new self-regulatory organization

Dear Mr. Lebel:

The Conseil des fonds d'investissement du Québec (CFIQ) is grateful for the opportunity to submit comments as part of the consultations on the implementation of the new self-regulatory organization (New SRO) by the Autorité des marchés financiers (AMF), *Regulation to amend Regulation 31-103 respecting registration requirements, exemptions and ongoing registrant obligations – Amendments respecting the transition for Québec mutual fund dealers to the New SRO*, and the Canadian Securities Administrators (CSA), the CSA Staff Notice and Request for Comment 25-304 – *Application for Recognition of New Self-Regulatory Organization* and the CSA Staff Notice and Request for Comment 25-305 – *Application for Approval of the New Investor Protection Fund*.

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 approximately 150 organizations, including fund managers, distributors and industry service organizations, to foster a strong, stable investment sector where investors can realize their financial goals.

CFIQ operates within a governance framework that gathers member input through working committees. The recommendations of the working committees are submitted to the committees of CFIQ and IFIC and to the CFIQ board of governors. This process gives rise to a submission that reflects the input and perspectives of a wide range of industry members.

General comments

The CFIQ thanks the AMF for taking into account industry concerns and developing transitional measures to facilitate the transition of mutual fund dealers in Québec to the New SRO. In particular, we are grateful for the maintenance of the regulatory status quo, reduced membership fees, and the freeze on contributions to the New

SRO's investor protection fund (IPF). Maintaining the regulatory status quo during the transition period was one of the recommendations we made in our submission of October 4, 2021.¹

To further improve the implementation of the New SRO in Québec both during the transition period and in the permanent phase, this letter raises several issues. It is crucial that the benefits that are expected for investors and the industry through the creation of the New SRO to be achieved in Québec the same way as elsewhere in Canada.

It is important to note that the 45-day consultation period was not sufficient for the scope of these consultations. We are aware that the CSA is planning to launch the New SRO on January 1, 2023. However, we encourage the AMF and the CSA to provide longer consultation periods in the future. The additional time would improve the analysis of the issues and the quality of the stakeholders' input. We were unfortunately unable to provide comments on some important aspects of this consultation due to a lack of time.

The comments below focus mainly on issues specific to Québec, along with certain aspects that are pan-Canadian in scope. Please refer to the IFIC submission for further comments from the investment funds industry.

Costs generated by the creation of the New SRO in Québec

Section 67 of Chapter I, Recognition of self-regulatory organizations, in the *Act respecting the regulation of the financial sector*, states:

*“67. The recognition of a legal person, partnership or other entity is subject to the discretion of the Authority. The Authority shall exercise its discretion in the public interest. Recognition must, in particular, secure **effective supervision** of the financial industry in Québec, promote the development and soundness in the operation of the financial industry and foster the protection of the public.”*

We would like to reiterate our concern about the effectiveness of adding a third organization to mutual fund oversight in Québec. As the New SRO has been recognized, we recommend robust cooperation agreements between the AMF, the New SRO and the Chambre de la sécurité financière (CSF) to avoid duplications. The industry would be happy to provide comments.

To ensure market efficiency and competition in the mutual fund industry in Québec, it is essential for the advent of the New SRO in Québec not to result in an increase in costs for the sector, which would result in increased costs for investors. As mentioned above, we are grateful that the AMF has considered the cost issue for the transitional measures. Nevertheless, we have concerns about the increase in costs during the transition period and especially during the permanent phase.

¹ [CFIQ comments to the AMF on CSA Position Paper 25-404 on the New SRO Framework](#)

Transition period

During the transition period, despite the reduced New SRO membership fees for mutual fund dealers in Québec, this cost will be added to current industry costs (annual AMF and CSF fees). In contrast, mutual fund dealers operating outside Québec will continue to pay membership fees equal to those they currently pay. We recommend that an equitable solution be implemented at least for the permanent phase that we outline below.

Permanent phase

For the permanent phase, we submit that the AMF should aim for a total cost formula that would ensure similar costs for mutual fund dealers in Québec and those of the same size outside Québec to ensure fair competition for Québec firms in relation to their counterparts in the other provinces. We are also concerned that there may be some overlap in the services offered by the New SRO and the CSF. In our opinion, mutual fund dealers working in Québec should not have to pay a financial price for the fact that the New SRO and the CSF will coexist.

To make things fair for Québec mutual fund dealers, to provide greater transparency in the fee system and to reduce the administrative burden on the industry, we recommend that the total fees for Québec mutual fund dealers be calculated and paid to the New SRO using the same formula that will apply to mutual fund dealers outside Québec. The New SRO would then share its revenue with the CSF to compensate it for the mutual fund services it provides in Québec. This would ensure that mutual fund dealers in Québec pay the same fees as their counterparts outside Québec. It would also allow Québec mutual fund dealers to manage one annual payment instead of two.

Protection fund

It appears that for the permanent phase, mutual fund dealers in Québec will have to contribute to two funds – the Fonds d'indemnisation des services financiers that already exists in Québec (and protects investors against fraud), and the New SRO's IPF (that protects investors against the insolvency of the dealer) – while mutual fund dealers outside Québec will only contribute to the latter fund. We agree with the principle that the financial system in Québec must provide adequate protection for investors. To this end, we recommend further consultation on the nature of the protection funds to analyze in more detail the risks investors should be protected from - fraud, insolvency or other - and set up a protection fund that meets the identified needs. We therefore recommend a freeze on contributions to the New SRO's IPF for mutual fund dealers in Québec until this consultation is held and its findings are implemented. Ultimately, it is essential for any permanent measure to be harmonized across Canada. Without a harmonized measure, Québec's mutual fund dealers should benefit from a permanent exemption from contributing to the New SRO's IPF.

Membership fees based on risk level

Another important component of the cost structure is the risk associated with the dealers' business model. Securities dealers offer a wider range of products than mutual fund dealers, increasing their risk level and, consequently, the level of supervision required from the New SRO. We therefore recommend that membership fees take this important aspect into account to ensure an adequate contribution from the members in relation to the level of service they will receive from the New SRO.

Complaint handling

In September 2021, the AMF published for consultation the *Regulation respecting complaint processing and dispute resolution in the financial sector*. In CFIQ's submission² for this consultation, we noted:

"While we note that the aim of the Regulation is to harmonize the processing of complaints between various financial sectors in Québec, the Regulation is inconsistent with national rules and the rules of self-regulatory organizations applicable to the same financial intermediaries in other Canadian jurisdictions."

We submit that, with the impending implementation of the New SRO's new rules, it would be better for the AMF to exclude mutual fund dealers from the *Regulation respecting complaint processing*, because they will have to follow the New SRO's rules in this regard. We want to point out that regulatory harmonization is a key objective in the creation of the New SRO. Our recommendation aims to establish a single complaint process for all mutual fund dealers in Canada. This system would allow for better complaint management for the New SRO with regard to all mutual fund dealers and provide a better transition for the final implementation of the New SRO.

Inspections during the transition period

Currently, mutual fund dealers based in Québec that are also members of the Mutual Fund Dealers Association of Canada (MFDA) undergo joint inspections by the AMF (for activities in Québec) and the MFDA (for activities outside Québec). During the transition period, we understand that the AMF will continue to conduct mutual fund dealer inspections for activities in Québec, however, it is unclear how activities outside Québec will be handled. For example, will the inspections be conducted by the Québec Regional Council of the New SRO or by the staff from the New SRO headquarters? Will the Québec Regional Council have adequate expertise and resources to inspect mutual fund dealers during the transition period? This is an important issue, as there are current inspections that have not been finalized and the mutual fund dealers would like to ensure consistency in this regard. We also recommend that during the transition period, the AMF and the New SRO issue a single comment report, rather than two separate ones, to facilitate implementation by the dealers.

We would also appreciate understanding how consistent the comments of the inspections during the transition period will be compared to the comments in the permanent phase given that the former will be based on current rules and the latter on the new rules. Information would be appreciated about any steps being taken by the AMF, MFDA and the Investment Industry Regulatory Organization of Canada (IIROC) to ensure the consistency of their feedback during the transition period, especially since the industry will soon undergo targeted reviews on client focused reforms.

² https://www.ific.ca/wp-content/themes/ific-new/util/downloads_new.php?id=26846&lang=en_CA

Commission sharing and incorporation of representatives

The answer to question 10 in the Frequently Asked Questions (FAQ) published by IIROC and the MFDA states:

“We will continue to allow commission redirection by those individuals registered as “dealing representative, mutual fund dealer” within those jurisdictions that permit commission redirection and in accordance with Mutual Fund Dealer Rule 2.4.1(b).”

This response refers to the MFDA rules, in other words, a practice that will be permitted for mutual fund dealers and representatives outside Québec. We would appreciate an explicit clarification that commissions can continue to be shared in Québec during the transition period and the permanent phase. Given that the role of the New SRO is to harmonize practices, it is important for the issue of shared commissions to be clear for all jurisdictions and sectors, namely, can full-service representatives also share their commissions?

The FAQ states that a person registered as a dealing representative, mutual fund dealer will continue to be allowed to redirect commissions within jurisdictions that permit commission redirection and in accordance with MFDA Rule 2.4.1(b). The FAQ states that an individual who is attached to a dual-registered firm and who changes to the category of “Registered Representative dealing in mutual funds only” can start or continue to redirect commissions. The New SRO’s rules for mutual fund dealers apply only to dual-registered firms where there is no corresponding requirement in the new Investment Dealer and Partially Consolidated Rules. MFDA Rule 2.4.1(b) does not impose a “requirement.” It is permissive. Consequently, the New SRO’s Investment Dealer and Partially Consolidated Rules should be amended to allow for commission redirection by registered representatives dealing in mutual funds only in jurisdictions that allow commission redirection. We believe that if this amendment is not made and registered representatives dealing only in mutual funds cannot redirect commissions in the jurisdictions that allow commissions to be redirected, the outcome will be a significant barrier for mutual fund dealers to become dual-registered firms. This would be inconsistent with the policy rationales supporting dual registration.

We would also like to express our appreciation for the consultations of the CSA Directed Commissions Working Group. CSA Position Paper 25-404, issued in August 2021, provided a detailed analysis of the issue and proposed to explore possible solutions. We are of the opinion that the viable long-term solution is the incorporation of mutual fund representatives to avoid any tax doubt that currently exists in Québec and that may exist elsewhere in Canada. The AMF should play a key role in this issue, to explain to the political authorities its importance for the viability and growth of mutual funds in Québec. We would be happy to work with the CSA working group on this important issue at the appropriate time.

Name and logo of the New SRO

Dealers who are members of the New SRO will be required to include its name and logo in a significant number of documents. According to our members, such a change could take at least 18 months to implement, as system changes are planned at least one year in advance. As the name of the New SRO is not yet known, we recommend that the CSA put transitional measures in place to avoid having firms be non-compliant when the New SRO comes into effect and to avoid forcing the industry to change the name twice. We also recommend a transitional period of at least 18 months for the implementation of the name and logo of the New SRO.

Proficiency requirements

We believe that people who offer the same products and services, regardless of the registration category of the dealer they are associated with, should be required to meet the same training requirements. In other words, the substance of the products and services offered by the representative should govern the proficiency requirements, rather than the dealer's registration category. We believe it is inappropriate to require a person registered in the category of dealing representative, mutual fund dealer in a dual-registered firm to complete the Conduct and Practices Handbook Course (CPH), in the absence of a compelling policy rationale. The existing proficiency requirements for MFDA mutual fund dealer representatives should apply to mutual fund only representatives of mutual fund dealers and dual-registered dealers under the New SRO rules.

Furthermore, it would be very costly for dual-registered dealers to fund a significant number of representatives to complete the CPH. For large dealers, the 270-day limit does not allow enough time for all their representatives to complete the CPH. Unjustified differences in training requirements could encourage people to switch from a dual-registered firm to a mutual fund dealer (regulatory arbitrage).

More importantly, we see this proficiency proposal as a major barrier to mutual fund dealers becoming dual-registered firms. This barrier could result in the failure to meet some major regulatory objectives of the New SRO.

The CPH is intended for IIROC Approved Persons and not those registered in the category of dealing representative, mutual fund dealer in a dual-registered firm. The IFSE Canadian Investment Funds course is perfectly suited to the purposes of a mutual fund dealer representative in a dual-registered firm. This course covers the ethical responsibilities of registrants, conflicts of interest, Canadian regulators, legislation and regulations, compliance, know your client, suitability, know your product, registration requirements and relationships with vulnerable and elderly investors. Where appropriate, as an alternative to the CPH, a new course specifically for people registered in the category of dealing representative, mutual fund dealer with dual-platform dealers could be developed and provided for continuing education credits. Any additional proficiency requirement should allow one year for completion from the time the dealer becomes a dual-registered dealer.

Investor advisory panel

We agree that it is important to give investors a voice in a sector that serves them. We would appreciate receiving clarifications about how the New SRO advisory panel will complement the new CSA advisory panel.

Commencement of permanent phase

The AMF notice states the following with regard to the permanent phase:

“Permanent phase: *This phase will begin on the later of:*

- (i) the implementation date of the New SRO's harmonized rule book,*
- (ii) the date that is one year after AMF approval of the New SRO's harmonized rule book*

or on any other date determined by the AMF, on a consultative basis (the Transition Phase Closing Date).”

We submit that a one-year transitional period is too short for mutual fund dealers to adapt to a new rule book for the New SRO, especially with the other measures that are expected to be implemented in the near future, including those related to total cost reporting obligations, the transition to T+1, refinement of the implementation of client focused reforms based on targeted reviews, adaptation to the banning of purchase options with deferred sales charges and the implementation of Bill 96. We recommend a transition period commensurate with the regulatory changes that will be required, especially for mutual fund dealers in Québec that did not engage in activities supervised by an SRO. One possibility could be a phased-in approach based on the complexity of the rules. This would allow the less onerous rules to come into force more quickly than the more complex ones.

We also recommend that the CSA set a reasonable timeframe for the development of the New SRO's harmonized rule book so that the process does not drag on.

Loss of self-regulation

The industry is already consulted through advisory panels or public or private consultations. The structure put in place by the CSA for the New SRO distorts what would normally constitute an SRO. The industry's role is relegated to that of a consultant when instead it should play a central part in establishing self-regulation.

In particular, CFIQ does not agree with the revised CSA governance and oversight approaches, which limit the voice of the members – particularly in matters where the CSA will have a veto, including business plans and exemptions from the New SRO's rules. Furthermore, it is proposed that the role of the current IIROC District Councils be changed to an advisory role to provide regional perspectives on national issues. This would also result in a substantial reduction of the industry's self-regulatory role, as it would, for example, deprive these councils of their powers to approve new members of the New SRO and the acquisition of dealers by members, to impose conditions on Approved Persons, to suspend or revoke the approval of Approved Persons and to grant proficiency exemptions.

Overall, while we agree with many of the governance proposals to strengthen accountability, we believe that the preceding reductions in self-regulatory authority do not achieve the right balance of self-regulatory authority in the industry.

The FAQ states that the Regional Councils will have an advisory role and make policy recommendations to the staff of the New SRO and that the National Council will act as a forum for cooperation and consultation among the Regional Councils and provide recommendations on regulatory policy matters. It is unclear whether the Regional Councils and the National Council will make recommendations to the CSA on the same topics and, if so, if there is a conflict, whether the National Council's policy recommendations will take precedence over those of the Regional Councils. It is important for this ambiguity to be clarified in an amended FAQ or otherwise.

Automatic registration

We commend the CSA for implementing an automatic registration process for the New SRO for existing IIROC and MFDA members. This helps reduce the administrative burden on the industry during the implementation of the New SRO.

Mr. Philippe Lebel
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Should you require any additional information, please do not hesitate to contact Kia Rassekh, Regional Director, CFIQ, by email at krassekh@ific.ca or by telephone at 514-985-7025.

Yours truly,



Eric Hallé
Chair of the Board of Governors
CFIQ