INVESTOR PROTECTION CLINIC

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October 23, 2020

Re: CSA Consultation Paper 25-402 *Consultation on the Self-Regulatory Organization Framework*

We are pleased to provide comments on CSA Consultation Paper 25-402. By way of background, the Investor Protection Clinic at Osgoode Hall Law School ("the Osgoode Investor Protection Clinic"), the first clinic of its kind in Canada, is dedicated to providing free legal advice and services to retail investors across the country.

Since launching in 2016, we have worked with a wide range of clients who have suffered investment losses. From elderly couples whose adviser mismanaged their entire life savings on the cusp of their retirement, to the single parent who fell victim to a fraudster promising massive returns, we have worked with vulnerable retail investors who need assistance in seeking redress but cannot afford a lawyer. We are pleased to bring their voices to CSA Consultation Paper 25-402.

We appreciate your consideration of our comments; in the spirit of brevity, we have focused on those questions and topics where we think we can best offer a value add to the process.

Sincerely,

Osgoode Investor Protection Clinic

Poonam Puri & Brigitte Catellier, Co-Directors

CSA Consultation Paper 25-402 Response: Osgoode Investor Protection Clinic

Introductory Comments

Overall, the Osgoode IPC is in favour of streamlining the self-regulatory organizations (SROs) and we believe that a single SRO structure that covers all registered firms providing advice will benefit retail investors. As a broad principle, we recommend that the new SRO incorporate best practices for investor protection from both predecessor organizations.

Robust and meaningful investor protection is critical for strong capital markets. Without adequate protection, investors will not feel confident in the markets and will not invest. Economic growth depends on investors trusting that the rules of the game are fair, robust and responsive to changes in the market. Having a strong investor protection framework for any merged SRO is not only good for investors, but also for registrants.

Issue 2, "Product-Based Regulation", p. 18

Our clients, vulnerable retail investors often with little investment knowledge, have remarked to us about the confusing nature of the current regulatory regime. Regulatory complexity makes the process of investing more difficult for average Canadians, and if their investments are mishandled, a confusing registration and regulatory regime creates unnecessary hardship for already-harmed individuals.

We support the principle of rule harmonization between SROs and the CSA, so long as the harmonized rules are not reflective of a "race to the bottom". Lack of harmonization, including with respect to know-your-client and suitability requirements, further exacerbates investor confusion and disadvantages retail investors in particular, who may see the same terms and assume they have the same meaning and application.

Issue 5, "Investor Confusion", p. 23

We welcome the CSA's focus on investor confusion. As cost of living gets more expensive, and as more Canadians are expected to save for their own retirement, average investors are saving more and investing more to create a safety net for their later years. At the same time, increasingly complex products have made investing more complicated and new technologies such as crypto-assets and social media have enhanced the risk of fraud.

The IPC agrees that retail investors are often confused about the securities regulatory regime in Canada. They often do not understand the role of the SROs or their jurisdiction, nor their relationship to the securities commissions. A single SRO would address this confusion in part, but investor education is key as well.

We also welcome the CSA's comments about multiple titles and the impact on investor confusion. Investors who seek the Clinic's help are often confused as to the differences between the various titles and the credentials (if any) behind those titles. Our clients in Ontario are often unaware that common business titles are unregulated in the province.[1] Beyond simply confusion, this leads to serious investor protection concerns, with potentially unqualified individuals abusing the trust that comes with a specific title and mishandling investor funds, whether purposefully or due to negligence.

With respect to multiple registration categories and differing rules, we agree that there are suitability concerns when retail investors do not understand the registration categories and view their advisers as akin to fiduciaries—even if the investors may not articulate the relationship in that exact legal term—when in fact the advisers are salespeople.

Question 5.1(b): Describe the difficulties clients face in easily navigating complaint resolution processes.

When they were financially harmed, multiple Clinic clients expressed confusion about the complaints processes available to them. Our clients explain that, when they invest their hard-earned monies, they are not always thinking about what could go wrong. Even if the complaints process is mentioned by their adviser when they first invest, they are still confused about what to do if they think their investment has been mishandled. Clients have expressed confusion about where to complain, how to file the complaint, what to mention in their complaint and how best to get redress.

When they are looking to file a complaint, investors face a complex regulatory regime. With OBSI, IIROC, the MFDA, and the securities regulators, our clients do not know where to turn when they have been harmed. Often, the most promising path to restitution is civil litigation. Many of our clients, however, cannot afford a long and costly litigation process.

If they are able to determine which regulator to file a complaint with, our clients have

[1] The Financial Services Regulatory Authority of Ontario is conducting consultations on a financial adviser and financial planner title regulatory regime currently.

told us that the complaints processes are often opaque. They are not sure what information to include in the complaint, which documents to attach or how to properly frame their issues.

Issue 6, "Public Confidence in the Regulatory Framework", p. 23

Question 6.1(c): Describe instances of how investor advocacy could be improved.

We welcome the comments from stakeholders advocating for enhancing the investor voice in the SROs and in any merged SRO. We encourage the CSA to mandate formal investor advocacy mechanisms in the SRO governance structure. These could include requirements for directors with investor protection experience (as is being contemplated by the Ontario Capital Markets Modernization Taskforce) and the creation of investor advisory panels (IAPs).[2]

A mandatory IAP within the SRO governance structure is an important investor advocacy mechanism. An IAP is able to provide critical insight to the leadership of the SROs. The Ontario Securities Commission has had an IAP for several years. Its mandate is as follows:

> The Panel's mandate is to solicit and represent the views of investors on the Commission's policy and rule making initiatives. In order to fulfil its mandate, the Panel will:
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> - Advise and comment in writing on proposed rules, policies, concept papers and discussion drafts, including the Commission's annual Statement of Priorities;
> - Consider views representative of a broad range of investors through consultation with and input from investors and organizations representing investors in formulating its advice and written submissions to the Commission;
> - Bring forward for the Commission's consideration policy issues that may emerge as a result of the Panel's investor consultation activities and comment on the potential implications for investors posed by those issues;
> - Advise and comment in writing on the effectiveness of the investor protection initiatives implemented by the Commission.

[2] IIROC has announced its intention to form an Expert Investor Issue Panel, a step in the right direction.

If similar IAPs were mandated in the SROs, they would gain an additional, value-added investor perspective. The IAP is able to conduct detailed research and consult with experts in real time, providing a dedicated investor protection perspective to SRO leadership.

Question 6.1(e): Do you agree, or disagree, with the concerns expressed regarding SRO compliance and enforcement practices? Are there other concerns with these practices?

We echo some of the concerns raised about the enforcement processes at the SROs. Our clients who consider filing a complaint with an SRO express dismay to learn that the SROs are not necessarily focused on helping them recover their lost funds. They understand the public policy importance of deterrence, but their top priority is to recover their money, which they lost often through no fault of their own. For many of our clients, this money represents retirement savings or funds for children's education.

In our experience, not being able to get their money back not only impacts our clients in terms of real financial harm, but also reduces their confidence in the capital markets and the securities regulatory regime.

We note that in June of this year, IIROC announced that it was considering ways to return monies to harmed investors.[3] The IPC, in principle, welcomes this step and encourages the CSA to ensure any merged SRO likewise contains such mandates and procedures.

[3] For more on this, please see: https://www.investmentexecutive.com/news/from-the-regulators/iiroc-examines-returning-money-to-harmed-investors/