

February 4, 2025

Via Email

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Re: Rule Consolidation Project - Phase 4 (Phase 4 Proposed DC Rules)

Aligned Capital Partners Inc. (ACPI) appreciates the opportunity to provide comments on the Phase 4 Proposed DC Rules published October 17, 2024, through rules bulletin 24-0293. ACPI is a strong proponent for regulatory reforms that put investors interests at the forefront, enable positive investor outcomes, and level the playing field for CIRO dealers. We believe that a harmonized and consolidated rule book is critical and that the ultimate alignment of rules that differ between the “investment dealer rules” and mutual fund dealer rules” should not result in limitation or elimination of investor choices.

For the purposes of this submission, we will be commenting on two key areas that ACPI believes are important to the ongoing development of the consolidated rule book project:

1. Additional account types and services – mutual fund dealers [2.1]

As noted in 24-0293:

Whether to propose expansion of the account types that can be offered by mutual fund dealers: After discussing stakeholder comments with the Canadian Securities Administrators (CSA), it has been determined that *CIRO will not proceed to propose to allow mutual fund dealers the ability to offer discretionary accounts, managed accounts or order execution only accounts as part of the Rule Consolidation Project. Any such proposals would be developed in consultation with the CSA as part of a separate policy project with a separate timeline. [Emphasis added]*

ACPI believes that a deferral of this decision is not in the best interests of “mutual fund only” clients, given the ongoing harmonization efforts and outcomes which will be achieved post rule book consolidation which contemplate the benefits of integrating these two types of dealers.

Recognizing that clients of investment dealers and mutual fund dealers should be treated equally where applicable (and subject to proficiency requirements under securities legislation), ACPI believes there remains an opportunity for mutual fund only clients to access managed solutions offered through CIRO dealers that operate unified managed accounts (UMA) and separately managed accounts (SMA) (collectively referred to as managed solutions) without compromising investor protection, the registration of mutual fund only advisors or the CIRO dealers who employ them.

For the purposes of this response, ACPI fully supports the existing obligations and proficiency requirements in order to permit the discretionary management of investment products in a client's (managed) account. In the discussion below, ACPI submits that such proficiencies would neither be applicable nor required with respect to managed solutions available to clients of mutual fund only advisors as these advisors would not be acting with discretion (nor would there be intention to) and furthermore, through the usual and customary client onboarding, this distinction would be made very clear both contractually and through disclosure to the client (i.e. the difference between a managed account versus a managed solution).

In short, where traditional discretionary management (or managed accounts) are suggested for a client, stated proficiencies for a portfolio manager would be required. With respect to **managed solutions**, ACPI believes that mutual fund only clients should have access to such solutions based on the following, which is presently in place for investment dealer clients:

- a. Registered representatives (RRs) of investment dealers have traditionally been permitted to offer clients access to managed solutions. RRs are not legally permitted to offer managed account services as they lack the proficiency to do so. That said, in providing clients access to managed solutions, RRs maintain a critical role in the client relationship.
- b. RRs can, however, discuss with their clients (and make recommendations to clients) which pertain to strategies and models which are offered by investment dealers via a managed solutions type program (i.e. a UMA or SMA style of program offering). In so doing, the RRs will go through the customary client onboarding process and will assess the suitability of such an account based on the know your client information gathered from their clients.
- c. Once this process has been completed and a recommendation from an RR to invest in a *mandate*, *strategy* or *model* that is suitable has been made, the client in question will execute documentation which provides discretion **not to the RR, but rather, to a fully proficient and licensed portfolio manager**. It is the portfolio manager (and not the RR) who manages the model on a discretionary basis while the RR, on instruction from the client and pursuant to an executed contract, has supported the client on the selection of a suitable client mandate, strategy or model based on the client's stated know your client information.

ACPI believes that the Phase 4 Proposed DC Rules should permit mutual fund only registrants (and their clients) to have access to managed solutions based on the above process as mutual fund only registrants are proficient and licensed to engage in the identical activities noted above, i.e. the onboarding and discovery of client information and the recommendation of suitable investment strategies, mandates and models, leaving the actual discretion over investment selection to licensed portfolio managers as is presently in place for RRs of investment dealers.

As part of this process, and in keeping with rules presently in place, and further to promote investor protection and improved client outcomes, clients being offered these managed solutions must be provided with all relevant information outlining the type of account in question, the nature of the relationship in place between the mutual fund only registrant and the portfolio manager and the client, as well as disclosure regarding the mandate, strategy or investment model and applicable asset allocation as well as underlying or reference assets. It goes without saying that CIRO dealers offering these types of services must have systems of compliance in place to properly supervise such an account type and relationship.

Managed solutions offer enhanced efficiencies based on the type of relationship in place (between client and registrant) as well as a reduction in cost to both firms and clients. ACPI strongly believes that CIRO dealers should provide clients of mutual fund only advisors with equal access to products through managed solutions that may otherwise not be available to them due to high minimums and/or accreditation requirements.

2. Personal Financial Dealings [2.5.3]

In 24-0293, CIRO posed the following for comment:

Does the addition of the prohibition on an Approved Person or employee accepting a position of power of attorney, trustee, executor or otherwise having full or partial control of the affairs of a client have implications in respect of the relationship between the client and the Approved Person or employee? Should there be exceptions to this prohibition, and if so, under what circumstances?

ACPI believes that certain aspects of CIRO's proposal on the consolidation of the Personal Financial Dealings (PFD) rule would not result in the desired goal of streamlining the regulatory landscape and improving investor outcomes. Specifically, the proposals to have the MFD Rules' approach to having control or authority – particularly in relation to adoption of language prohibiting “accepting” the position of executor or attorney for a client, and the IDPC application of the rule to all employees of a member. Rather than having the outcome of serving the clients' best interests, ACPI believes, respectfully, that these proposals may lead to opposite effect.

Despite the slight variation in the language, there is no difference between the IDPC Rule and the MFD Rule. An individual does not “accept” the position of executor or attorney until they act in such a capacity. Notwithstanding this, ACPI strongly believes that CIRO should adopt the language of the IDPC Rule, as it is clearer and less prone to misinterpretation.

ACPI is of the opinion that a client should be free to appoint their investment advisor as their attorney for property or as the executor of their estate if it is their desire to do so. The appointment itself creates no conflict. If the client becomes incapacitated or dies, as the case may be, the potential conflict arises and must be addressed. At that point, the appointed individual should resolve the potential conflict in what they believe to be the client's best interests, based on the circumstances, and choose to either decline to act in the role as attorney or executor and continue in the role of investment advisor, or act as attorney or executor and resign from the role of investment advisor.

Given our aging population, more and more clients are finding themselves with increasingly fewer individuals they can turn to in such a capacity. What is more, investment advisors are often uniquely suited to assist.

They are trusted professionals with an understanding of the client's financial situation and needs; they often

have an understanding of the client's family dynamics; they are impartial parties without an interest in the client's assets or estate; and perhaps most glaringly have, through their registration, been adjudged to be of good moral character and financial solvency.

One concern with the proposal to adopt the language currently contained in the MFD Rules is our awareness of instances where individuals merely being named by a client as an executor or attorney – whether known to the individual at the time or not – as being viewed as “accepting” the position, and therefore in violation of the MFD version of the PFD rule. This approach demonstrates a fundamental misunderstanding of the appointment of an individual as an executor or attorney for property.

There is no “acceptance” of the role of attorney or executor until the person so designated acts. Designating an individual to act in such a capacity is a one-way street; it's a unilateral expression of the grantor or testator's wishes. No province in Canada requires the individual appointed to “accept” the position at the time of designation. While in certain jurisdictions – such as British Columbia and Manitoba – it has become common practice for individuals so designated to acknowledge their appointment, this acknowledgement is purely an affirmation of their understanding of the role and, to some degree, their willingness to act if necessary. However, these individuals are free to decline to act and neither an awareness of being designated, nor an acknowledgement of such an appointment, constitutes an “acceptance” of the position.

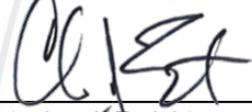
A prohibition on allowing an employee of a member firm from being appointed to one of these positions restricts the client's ability to determine who is best suited to manage their affairs; ACPI firmly believes that, while well-meaning, this is not in line with the clients' best interests.

The request for comments notes it is “critical to the integrity of the investment industry to minimize and manage all reasonably foreseeable potential sources of conflicts of interest, which would include conflicts of interest involving employees of Dealer Members.” However, it is not immediately clear what reasonably foreseeable conflict arises solely by way of an individual with control over a client's affairs being an employee of the firm. We fail to see the necessity to extend this blanket prohibition to non-registered employees of a Dealer Member who may have no influence over or interaction with the client. While there is currently a carve-out within the rules for a “Related Person” as defined by the *Income Tax Act* (Canada), this exception is, to some degree, arbitrary and does not take into account the particular facts of the relationship to determine whether there is indeed a conflict in that particular circumstance. A more measured and practical approach would be to allow member firms to review these instances and apply their general conflicts analysis to them on a case-by-case basis.

ACPI is very appreciative for the opportunity to share its insights and opinions on these matters to assist with CIRI's analysis.

Sincerely,

ALIGNED CAPITAL PARTNERS INC.



Christopher J. Enright
President and Managing Director