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Re: Comments on Rule Consolidation Project - Phase 4

The Federation of Independent Dealers - Fédération des Courtiers Indépendants represents a diverse range of CIRO member dealerships in both the Investment Dealer (ID) and Mutual Fund Dealer (MFD) channels. We appreciate the opportunity to provide feedback on the fourth phase of the proposed Dealer and Consolidated Rules and their potential impacts on our members and the broader investment industry.

The Federation supports the overall objective of the Rule Consolidation Project to harmonize regulations and minimize the regulatory differences between investment dealers and mutual fund dealers.

2.1 Additional account types and services we are proposing to allow mutual fund dealers to offer

Not permitting MFDs to offer OEO accounts for allowable product types seems a missed opportunity in this rapidly changing technological environment. Although not used now, the possibility of offering an OEO pooled product and ETF dealer may be of interest as firms continue to develop their technology and could be operating within existing MFD licensing parameters. Restricting these firms to advisor-sales-only continues a regulatory arbitrage i.e. If an investor wants to DIY purchase a mutual fund, they must go to a securities dealer.

We are pleased to hear that two items of regulatory arbitrage will be eliminated with the proposal to allow MFDs to offer margin accounts to clients in some scenarios and to use client free credit cash balances within their operations. We are grateful to the regulators for harmonizing these beneficial options to MFD firms. We look forward to the details being presented in Phase 5. Unfortunately, we also expect to see comment letters voicing protection for these channel advantages in abundance.

2.2 Rule interpretation and definitions of common application throughout the rules (DC Rules 1100 and 1200)

We agree with CIROs approach to delegation and automation.

2.2.2 Definition of “investment product”

We agree with CIROs new definition of investment product.

2.3 Approved Person regime, proficiency requirements, and managing significant areas of risk (DC Rules 1500, 2500 and 2600)

2.3.1 Overview of proposed changes to harmonize the Approved Person regime and corresponding proficiency requirements

We agree with the rationale put forth in this section, to only extend the existing CIRO approval process to apply to the Approved Person categories of mutual fund dealers only where those categories are not subject to an underlying securities legislation registration requirement.

Proposed Approved Person regime for mutual fund dealers

We agree with CIROs rationale and appreciate the bifurcation of the Approved Person definition, APs being able to continue to rely on their existing registration requirements and the planned extended implementation period for impacted individuals.

2.3.2 Approved Person categories subject to securities legislation registration requirements

Harmonizing the defined Approved Person category in DC Rules to align registered representatives and dealing representatives

The harmonized title should properly align with the legislation as Dealing Representative. As noted in the proposal ‘these roles are both fundamentally based on the registration category of dealing representative, as set out in National Instrument 31-103. It would be improper to change AP titles away from one aligning with the legislation category ‘dealing representative’ to adopt a title that doesn’t align with the legislation.

2.3.3 Approved Person category: Supervisor

We agree with the proposed harmonization of the Branch Manager title into the Supervisor title and understand CIRO intends to review applicants for Supervisor roles. We presume that CIRO will not be charging additional fees to review each of these of new applications.

Maintaining proficiency requirements for Supervisors across Dealer Members

We look forward to CIRO's project on examining harmonizing proficiency requirements between Branch Managers and Supervisors.

2.3.4 Approved Person category: Executive

We agree with the proposed introduction of the Executive category for individuals at MFD firms that have authority over areas of the Dealer Member's business that involves regulatory requirements.

2.3.5 Approved Person category: Director

Harmonizing the Approved Person regime and proficiency requirements for Directors across Dealer Members

We agree with the introduction of a CIRO approval process for directors. However, registration requirements must be determined along a spectrum. That allows all firms to add complexity and proficiencies as needed, based upon the intended activity. Therefore, the additional burden of proficiency requirements for MFD directors should be avoided.

However, if these changes are implemented, our minimum expectation is that current directors (that have been directors of a firm since inception, or more than 5 years) will be grandfathered.

We agree that CIRO should not mandate a percentage of 'active engagement' requirement for directors.

2.3.6 Approved Person category: Chief Financial Officer

A CFO requirement must be based on the complexity of products or services offered, not merely be based on AUA or corporate governance structure. Unless a dealer is engaged in specific activities that warrant it, the CFO requirement will increase costs unnecessarily, particularly for the smallest dealers and simplest structures.

2.4 The National Registration Database (DC Rule 2800)

We agree with the proposed amendment to facilitate the use of NRD by MFD dealers.

2.5 Dealing with Clients - Conflicts of Interest (DC Rule 3100)

2.5.1 Conflicts of interest policies and procedures

We agree with this provision requiring specificity regarding material conflicts of interest be added to MFD policies and procedures. As this is a time-consuming exercise, we welcome any resource or reference that may be available to ease and synchronize the implementation.

2.5.2 Personal financial dealings – Application to employees

We agree with the proposal to restrict Approved Persons for engaging in any personal financial dealing with clients. However, we disagree when it comes to all employees not having financial engagements with clients, as it is difficult for a dealer to guard against the consequences, other than communicate the regulatory restriction to all staff. E.g. an employee has had a financial dealing with a client, when the employee has no awareness that the person is a client. Are client lists to be provided to all employees? A ‘knowingly’ clause needs to be included.

2.5.3 Personal financial dealings – Accepting any consideration

We agree with the proposal to adopt the listed exceptions.

2.5.4 Personal financial dealings – Settlement agreements without the Dealer Member’s approval

We agree with adopting this rule.

2.5.5 Personal financial dealings – Borrowing from clients

We agree with adopting this rule.

2.5.6 Personal financial dealings – Lending to clients

We agree with adopting this rule.

2.5.7 Personal financial dealings – Control or authority

We agree with adopting this rule.

2.5.8 Personal financial dealings – Beneficiary status and estate bequests

We agree with adopting this rule but would like clarity on what level of detail the disclosure to the firm requires, if any, beyond the nature of the relationship to the beneficiary designator and/or deceased, timing of the estate bequest. We agree with the proposed definition of immediate family proposed as “‘immediate family’ as parents, grandparents, mother-in-law or father-in-law, spouse or domestic partner, brother or sister, brother-in-law or sister-in-law, son-in law or daughter-in-law, children, grandchildren, cousin, aunt or uncle, or niece or nephew, and any other person who resides in the same household

as the Approved Person or employee and the Approved Person or employee financially supports, directly or indirectly, to a material extent. The term includes step and adoptive relationships.”

A key consideration for appointment to Power of Attorney or Executor is whether they obtained the status through a position of influence, which isn't necessarily a question for a regulator to decide. Should be dealt with by the executor and other beneficiaries, who can all challenge the will through the courts. Such a prohibition may be denying the client their last true wishes.

2.5.9 Referral arrangements

We agree with adopting the rule provisions into the DC Rules.

2.6 Know-your-client and client accounts (DC Rule 3200)

2.6.1 Know-your-client

We agree with this proposal to adopt the less prescriptive IDPC Rule provisions for KYC and foregoing the 'requirement to establish whether the client is an insider of a reporting issuer' for MFD firms.

2.6.2 Client identification - Trusts or corporations

We agree with these changes to comply fully with the requirements under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA) and associated Regulations.¹

2.6.3 Client information - Primary responsibility, delegation and obligation to keep current

We appreciate CIRO removing the burden that 'a mutual fund dealer must annually request that each client notify them if there has been any material change in client information previously provided.'

2.6.4 Account opening policies and procedures – Opening new client accounts

We agree with adopting the IDPC provisions that additionally permit paying out funds or delivering out investment product provisions to the client if the supervisor does not approve a new account after the initial trade.

2.6.5 Updating client account information

We agree with adopting this MFD Rule to continue to permit a mutual fund dealer to use a copy of a client's current account information where they are transacting in securities that require registration under securities legislation as an exempt market dealer, if the account was approved in the past 12 months.

2.6.6 Relationship disclosure

¹ <https://fintrac-canafe.canada.ca/guidance-directives/client-clientele/bor-eng#annex3>

2.6.7 Accepting specific account types

It may be premature to draft into DC Rules specific account types (other than derivatives accounts) for ID firms, when a CIRO project is pending to consider the availability of two of the account types for MFD firms. If any are approved for use by MFD firms, CIRO will need to amend the adopted rule.

2.7 Product due diligence and know-your-product (DC Rule 3300)

2.7.1 Terminology – Investment products vs securities and derivatives

In order to align the Rules in DC 1201, 3301, and 3302, CIRO can consider retaining the adopted definition of ‘Investment Products’, and then add specificity to the definition. i.e. Any asset, excluding cash, held or transacted in a client account by the Dealer Member, including a product that is a security, is a derivative, is precious metals bullion, or has been approved by the Board as an investment product.

2.8 Suitability determination (DC Rule 3400)

We agree with adopting the IDPC Rule suitability provisions and allow both ID and MFD firms to distinguish between retail and institutional clients and comply with the rules relevant to each client type.

2.8.1 Retail client suitability determination requirements

We agree with retaining the IDPC Rule provision that allows for additional flexibility on the timeframe for obtaining suitability assessments.

2.8.2 Unsuitable investments in a client account

We agree with the adoption of the MFD Rule provision.

2.8.3 Suitability of leverage strategies

We agree with adopting the IDPC Rule Guidance on Borrowing for Investment Purposes and MFD Rule provisions on Suitability of leverage strategies.

2.10 Communications with the public (DC Rule 3600)

2.10.1 Advertisements, sales communications and client communications

We agree with these proposed changes.

2.11 Supervision (DC Rule 3900)

2.11.1 Delegation of supervisory tasks

We agree with the proposed change to the delegation provision requiring Supervisors be informed of tasks that have been automated and ensuring the Supervisor understands how the automated tasks and activities work, and ensuring proper performance of the function in a compliant manner. We suggest changing the word 'understands' to 'has been provided with the necessary information to understand', or 'has been fully informed'.

2.11.3 Governance document

We agree with the proposal to adopt the IDPC Rule requirement to file any materials changes made to a Dealer Member's governance document.

2.11.4 Supervision of shared office premises

We agree with this proposal and related numerous changes under IDPC Rule section 2216.

2.11.5 Supervisory Responsibilities

We agree with the adoption of these IDPC Rule provisions and amendments.

2.11.6 Account supervision policies and procedures

We agree with the adoption of these two new requirements, to identify clients that present a high risk to the Dealer Member and having specific policies and procedures that include controls for accessing and amending client records.

2.11.7 Daily and monthly trade supervision

We agree with the adoption of the IDPC Rules for trade supervision.

Regarding the inclusion of an MFD-only Rules requirement that mutual fund dealers specifically designate for supervision purposes, leveraged accounts, registered accounts and accounts where the Registered Representative has full or partial control or authority over the financial affairs of the client who is a Related Person of the Registered Representative. The requirement is more applicable to ID firms, or harmonized across both channels, otherwise the requirement should be dropped.

2.11.8 Supervision of new Registered Representatives and Investment Representatives

We agree with the principles-based approach in the IDPC Rules.

2.11.9 Supervision of specific account types

We agree with adoption of these IDPC Rule provisions relating to the supervision of specific account types that can be offered by investment dealers, namely derivatives accounts, discretionary accounts, and managed accounts.

2.12 CIRO review procedures for approvals and Membership (DC Rules 9200, 9300 and 9400)

Streamline the decision review process for regulatory decisions

We agree with permitting decisions under the Proposed DC Rules sections 9204, 9206, and 9207 and 9208 will be reviewable by a Hearing Panel.

We agree with adoption of the terms 'regulatory decision' and 'senior decision officer'.

We agree with the proposal to apply the decision review process, including the changes described above, to mutual fund dealers.

Membership applications

We agree with the proposed changes to modified IDPC Rule section 9205.

2.12.2 Procedures for opportunities to be heard before decisions on approval and regulatory compliance matters

We agree with the clarifying changes to Rule 9400 and its application to mutual fund dealers.

We appreciate the opportunity to provide our comments and look forward to continuing to engage with CIRO on this important initiative.

Sincerely,

Matthew T. Latimer
Executive Director
Fédération des Courtiers Indépendants