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**Re: Comments on Rule Consolidation Project - Phase 4**

The Association of Canadian Compliance Professionals (“ACCP”) is a national organization whose members are compliance professionals working with mutual fund dealers, exempt market dealers, mutual fund companies, insurance companies and MGAs, as well as industry service providers including legal, technology and independent consultants.

The ACCP welcomes the opportunity to provide both feedback on the fourth phase of the proposed Dealer and Consolidated Rules and their potential impacts on our members and the investment industry. The ACCP supports the overall objective of the Rule Consolidation to harmonize regulations and minimize the regulatory differences between investment dealers and mutual fund dealers.

Our general comments are as follows:

### Consultation Period – Timing

The Phase 4 of the Rule Consolidation Project (“DC Rules”) was published for comment on October 17, 2024 which included, among many other references/links to information, a substantial number of rules to be considered in the process of providing a response to the proposed DC Rules. Given the volume of information and complexity of this Phase of the DC Rules, the timing of this request (yearend), significance of the proposed DC Rules, competing industry consultations, and CIRO Examinations, we believe a 90-day comment period was not sufficient time for mutual fund dealers to provide a thorough and substantive response.

We highly recommend that future consultations take into consideration all consultation processes impacting the industry, including those undertaken by CIRO and other securities regulators which will provide a more comprehensive and meaningful consultation process that we believe will improve policy outcomes.

We recommend CIRO provide stakeholders with no less than 90 days for all future CIRO consultations in order to ensure adequate time is given to carefully consider CIRO’s proposals. This would include, publishing the aggregated DC Rules for final review and comment after Phase 5 of this initiative, but prior to the final approval of the DC Rules.

### **CIRO Guidance**

We recommend MFDA Member Staff Notices remain in effect, where applicable, until such time CIRO provides guidance on the final DC Rules.

We further recommend CIRO undertake a project that includes public consultation when considering conforming changes to the existing interim guidance to create the guidance to be used for the final DC Rules. The final DC Rules should not come into force until conforming consolidated guidance is finalized after public consultation.

### **Impact**

While CIROs Impact Analysis of the Phase 4 Proposed DC Rules and corresponding Assessment Table (Appendix 4) purports to have some minor negative, neutral, or minor positive impacts to mutual fund dealers, we submit that CIRO has not fully considered the impact of the application of such amendments. This would include but not be limited to, updating policies and procedures, field bulletins, training, changes to forms including disclosures, paper vs electronic, time, resources, software, systems and cost. As an example, CIRO Analysis notes personal financial dealings as a “Minor Positive” impact to mutual fund dealers, yet DC Rules have expanded the Rules to include employees. In formation that is most likely not currently known to mutual fund dealers as there was no regulatory prohibition or requirement for employees to disclose personal financial dealings (i.e. control or authority over a clients’ affairs, being named as beneficiary etc.) to mutual fund dealers prior to the proposed DC Rules.

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

Allowing Mutual Fund Dealers (MFDs) to offer Order Execution Only (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 CROs approach to delegation and automation.

### **2.2.2 Definition of “investment product”**

We agree with CROs 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 CRO 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

### **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 are in agreement with the proposed harmonization of the Branch Manager title into the Supervisor title and understand CRO intends to review applicants for Supervisor roles. We anticipate that CRO will not be charging additional fees to review each of these of new applications.

### **2.3.4 Approved Person category: Executive**

We in agreement 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 do not agree with adding additional requirements above the legislative standard that is in place today for MFD firms by introducing a CIRO approval process and proficiency requirement for directors. If these changes are implemented it should be on a going forward basis, current directors should be grandfathered. We agree that CIRO should not mandate a percentage of 'active engagement' that is required for directors.

### **2.3.6 Approved Person category: Chief Financial Officer**

CIRO's objective to harmonize the requirements between securities dealers and MFDs making the designation CFO mandatory may not have considered current operational realities of the mutual fund industry. Financial and regulatory responsibilities are often shared between a financial controller and designated person. This structure has been in place since the onset of the MFDA and has been tested through via SRO audits to ensure compliance. Requiring all MFDs to have a CFO is based on an assumption that all MFDs require a CFO to meet regulatory requirements.

We suggest that CIRO consider imposing the CFO requirement on MFDs where operational needs justify the presence of a CFO. This assessment could include the complexity of the corporate structure, as well as the breadth and range of the products and services offered.

We suggest a transition period to implement this requirement of five years to allow MFDs to qualify existing staff and or onboard new staff. A grandfathering clause should also be implemented to approve CFO's and those already holding a senior financial position, without the requirement of them meeting the new requirements.

We appreciate the need for harmonization; however, a blanket CFO requirement on all mutual fund dealers may be excessive and is not in alignment with industry realities. We request that CIRO reconsider this proposal, to better reflect the operational landscape of MFDs. A tailored approach, with a realistic transition period and grandfathering provision for those professionals that are already in place.

Regarding scalability noted in Question #2, we recommend the minimum AUM be set at \$5B for the requirement of individual registrants in each of the UDP and CCO roles.

## **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 and resource intensive 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 from engaging in any personal financial dealing with

clients. However, we disagree when it extends to all employees of the member that do not have financial engagements with clients. Under this scenario, would be difficult for a dealer to monitor all employees business activities other than through communication of the restrictions and member employment policies and procedures. Not all dealer employees have access to client specific information..

### **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, 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.<sup>1</sup>

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

We appreciate CRO 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**

### **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 CRO 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, CRO 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, CRO 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 in agreement 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 MFD members.

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

Please contact me with any questions you may have



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