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SUBMITTED VIA EMAIL

Member Regulation Policy
Canadian Investment Regulatory Organization
Bay Adelaide North
40 Temperance Street, Suite 2600
Toronto, Ontario, M5H 0B4
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Dear Sirs/Mesdames:

RE: CIRO Position Paper and Request for Comment: Policy Options for Leveling the Advisor Compensation Playing Field

We are writing on behalf of Scotiabank Canadian Wealth Management (“Scotiabank” or “we”) with respect to the Canadian Investment Regulatory Organization (“CIRO”) Position Paper and Request for Comment – Policy Options for Leveling the Advisor Compensation Playing Field (the “Position Paper”).

Scotiabank is supportive of CIRO’s commitment to developing a consistent approach for Approved Person (“Advisor”) compensation. We note the importance of leveling the playing field to permit all dealer-members to compensate Advisors through their personal corporations. In this manner, irrespective of their dealer-member’s business model or employee/agent working arrangement, all Advisors would be able to realize the benefits envisioned in the Position Paper.

To reach this outcome, we ask that CIRO work with industry members and stakeholders to consider the following, as detailed further below:

- (A) pursuing an approach that introduces payment to Advisor corporations for both registerable and non-registerable activities at the same time (“Registerable Activities Issue”);
- (B) clarifying that any approach would apply to dealers who organize themselves through either an employer/employee arrangement or a principal/agent arrangement (“Employee Issue”);

- (C) evaluating whether any chosen approach is capable of being operationalized in a manner that will yield the intended outcome under federal and provincial tax law (“Tax Issue”)¹; and
- (D) working with various provincial jurisdictions to implement any necessary legislative changes in a harmonized fashion (“Harmonized Implementation Issue”).

A. Registerable Activities Issue

We are supportive of adopting an approach that contemplates payment for both registerable and non-registerable activity. This is the structure allowed to mutual fund dealers currently through MFD Rules and provincial registration exemptions², and should be extended to investment dealers.

Proceeding with an approach that initially limits payment to non-registerable activities is problematic because it does not produce the desired Advisor compensation outcome. In short, it offers little tax benefit to the Advisor. An Advisor’s compensation largely flows from providing investment advice or trading services for a client – the core of registerable activity. The ancillary non-registerable activities associated with trading and advice are largely costs that Advisors absorb, and there is little financial benefit to flowing such costs to a personal corporation.

If a CIRO proposal proceeds with an interim approach allowing only non-registerable activity compensation, it will create a strong likelihood of industry confusion, with unclear lines between registerable and non-registerable activities. This could subject advisors to tax reassessments, as tax authorities may disagree with how Advisors allocate registerable and non-registerable activity with their dealers. Finally, it could put dealers in a position of provisioning for tax liability stemming from potential advisor reassessments, impacting dealers’ risk-adjusted capital.

In contrast, adopting an approach that introduces compensation for both registerable and non-registerable activity at the same time removes this confusion and provides clarity to the industry on permissible payment flows, allowing (1) Advisors to achieve the compensation benefits intended by the Position Paper (2) dealers to operationalize a payment mechanism that will facilitate this Advisor compensation, (3) a clear revenue model which can be explained to tax authorities.

¹ In respect of the Tax Issue, we recognize the Position Paper abstained from tax considerations to explore policy objectives. However, once the preferred approach in the Position Paper is finalized into a formal CIRO proposal, we submit that its success and usability will depend on its clear compatibility with governing tax laws.

² See “CSA Position Paper 25-404 – New Self-Regulatory Organization Framework” (2021) 44 O.S.C.B. 6697 at 6710.

B. Employer/Employee Issue

We are concerned that the proposed compensation approaches set out in the Position Paper may be construed to apply to the principal/agent arrangement alone. To truly level the playing field for all Advisors, the enabling CIRO Rules and/or legislation should specify that the selected approach is available to Advisors working pursuant to either an employer/employee arrangement or a principal/agent arrangement.

We note this issue is particularly important for Advisors who receive benefits and pensions as employees of a dealer-member. If these Advisors cannot move to CIRO's new compensation approach without terminating their employment status (and associated employment benefits), it will have a dramatic impact on their ability to participate in the new approach. In short, for many Advisors, any approach that fails to accommodate continued participation in existing employee benefits programs is unworkable.

C. Harmonization Issue

We are concerned that any necessary legislative changes in each jurisdiction may come at different times and therefore create a disharmonized system across Canada. We recommend that CIRO work with the various provincial jurisdictions to implement any necessary legislative changes in a harmonized fashion, so that all Advisors can participate equally in the system on a level playing field.

Conclusion

In summary, we are looking forward to working with CIRO and other stakeholders on a framework which is compliant with all legal, tax and regulatory requirements regardless of legacy licencing (MFDA or IIROC) and irrespective of the Advisor engagement model (employee or agent).

Yours truly,



Alex Besharat
Executive Vice President
Canadian Wealth Management

cc: Market Regulation, Ontario Securities Commission (marketregulation@osc.gov.on.ca)
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