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VIA EMAIL

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Re: Policy Options for Leveling the Advisor Compensation Playing Field (the “Consultation”)

The Canadian Advocacy Council of CFA Societies Canada (the “**CAC**”)¹ appreciates the opportunity to provide the following general comments on the Consultation and responses to the specific questions listed below.

We have been impressed by CIRO’s commitments to transparency and to stakeholder engagement and responsiveness in its nascent policy development initiatives. However, as it concerns this Consultation, we were disappointed to find that the Consultation did not include a detailed analysis on why this policy initiative is being undertaken at this time, nor set out clearly the underlying market and/or public interest issues meant to be addressed. We believe it is important, prior to undertaking any potentially disruptive new regulation, to indicate clearly why regulatory action in this area is warranted (other than a brief mention of tax considerations which are deemed out of scope) and to provide a data-driven impact analysis to evidence that the costs of the various proposals to be borne by firms and regulators were considered and outweighed by the benefits to Approved Persons.

For the development of policy and rules to be accurately reflective of stakeholder feedback, it must principally rely upon informed participation and engagement of a wide

¹ The CAC is an advocacy council for CFA Societies Canada, representing the 12 CFA Institute Member Societies across Canada and over 21,000 Canadian CFA charterholders. The council includes investment professionals across Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. Visit <http://www.cfacanada.org> to access the advocacy work of the CAC.

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stakeholder class. As such, presumption of knowledge and embedded references to prior public commentaries undermines the quality of feedback and thorough stakeholder engagement. We encourage CIRO to ensure the inclusion of a robust introduction to its policy projects, setting out the current regulatory landscape in detail with pertinent historical facts and considerations as part of any public consultation. Furthermore, although we recognize that one purpose of the Consultation is to further harmonize the rules relevant to investment dealers to those relevant to mutual fund dealers, as a starting point, we would have preferred a prefatory discussion on past regulatory initiatives and international standards in advisor compensation.

We have concerns as to the tax uncertainty on which the various proposals in the Consultation are based, and as a general comment would strongly encourage that clarity be sought from tax authorities before proceeding further with a policy project that is potentially materially disruptive to industry and inherently costly to regulators as a policy and regulatory implementation project.

We also have concerns from an investor protection perspective. Although we note that professional corporations can have provisions with respect to shareholder liability, the widespread use of corporations for tax benefits may facilitate a widespread regime of asset protection in the industry, either directly or generally through promoting corporate vehicles. In our view, these reforms have the potential to generate unfair outcomes for investors seeking redress, with the prevalence of such outcomes increasing over time. As such, we are generally not in support of the reforms contemplated in the Consultation.

The following are our comments on specific questions set out below.

Question #1 - This paper discusses compensation approaches that could be made available for use to all CIRO Approved Persons. Which of the following rulemaking options do you prefer that CIRO pursue and why:

- ***pure adoption of an Incorporated Approved Person approach,***
- ***pure adoption of a registered corporation approach, or***
- ***interim allowed use of an enhanced directed commission approach while pursuing over the medium-term the adoption of either:***
 - ***an Incorporated Approved Person approach, or***
 - ***a registered corporation approach.***

We are generally hesitant to support the interim use of the enhanced directed commission approach. In our view, this approach introduces a unique compliance burden for firms, which would then be subject to further change at an undefined period.

In the absence of a clear timeframe for how long the interim and medium-term periods would be, we would prefer CIRO to partner with the CSA to pursue and establish the regulatory groundwork, including any required securities legislative changes, to bring to fruition the Incorporated Approved Person approach from the outset, in a manner that would permit such persons to engage in both registrable and non-registrable activities under proper supervision and regulatory coverage. In our view, this would limit the compliance burden on firms, as it will better ensure that there is a defined set of rules to comply with that are not subject to incremental changes at an undefined future time. We



are also concerned that because the adoption of a bifurcated interim and medium-term approach may require securities legislative changes throughout Canada, it may further exacerbate regulatory burden by introducing further patchwork regulation.

As mentioned in previous CSA position papers and as alluded to in the Consultation, the tax treatment of directed commissions remains unclear, and as such, taking an approach that may result in widespread use of a strategy meant to provide tax benefits, but is currently uncertain, raises the compliance burden without a better understanding of stakeholder benefit. Therefore, we would be in favor of an approach that is supported by and promotes tax certainty.

Question #2 - Are there other requirements not discussed in this paper that CIRO should include within any rule amendments it proposes relating to acceptable compensation approaches?

The directed commission approach places a compliance burden to distinguish between non-registrable and registrable activity. This distinction is not always easily discernable. We would encourage CIRO to publish clear guidance, with a list of activities, accompanied by examples and scenarios, of permissible non-registrable activities for which commissions may be directed and those activities which begin to blur into registrable behaviour. We would also encourage CIRO, particularly if this approach is pursued in the interim, to provide ongoing guidance on this point based on field evidence acquired.

Concluding Remarks

We are generally hesitant to support the tax-driven regulatory reforms as contemplated in the Consultation. We are concerned that tax benefits to Approved Persons are being placed paramount to investor protection as an impetus for regulatory change, and that any perceived benefits may not outweigh the cost to industry in compliance measures. We acknowledge however, that there is industry momentum to pursue changes in this area; considering this, we would prefer that tax clarity be sought before any action on regulatory change, and that CIRO to work jointly with the CSA to establish the regulatory framework necessary to permit the Incorporated Approved Person approach in a fulsome manner at the outset.

We thank you for the opportunity to provide these comments and would be happy to address any questions you may have. Please feel free to contact us at cac@cfacanada.org on this or any other issue in the future.

(Signed) *The Canadian Advocacy Council of
CFA Societies Canada*

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