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Re: Rule Amendments Relating to the Proposed Adoption of an Incorporated Approved Person (IAP) Compensation Option

FAIR Canada is pleased to provide comments in response to the above-referenced Consultation.

FAIR Canada is a national, independent, non-profit organization known for balanced and thoughtful commentary on public policy matters. Our work includes advancing the rights of investors and financial consumers in Canada through:

- Informed policy submissions to governments and regulators
- Relevant research focused on retail investors
- Public outreach, collaboration, and education
- Proactive identification of emerging issues.[1]

A. Foundational Concerns with the Proposed Framework

FAIR Canada appreciates CIRO's efforts to create a harmonized compensation framework for approved persons and does not oppose the concept of an incorporated advisor model in principle. However, any such model must address the investor protection issues it raises and be supported by the analysis, guidance, agreements and legislative framework necessary to evaluate how it

[1] Visit www.faircanada.ca for more information.

would operate in practice. At this stage, important elements remain unresolved or have not been provided, including implementation guidance and agreements, an analysis of comparable regimes, necessary legislative amendments, and whether the Canadian Securities Administrators (CSA) would exempt IAPs from registration or establish a new category of non-individual registration. Taken together, these gaps prevent stakeholders from fully assessing the proposal and its implications for investor protection. We elaborate on these concerns below.

Moreover, any framework CIRO adopts should result in a nationally harmonized approach to advisor compensation that applies consistently across all CSA jurisdictions. If implementation requires provincial legislative or regulatory changes, CIRO and the CSA should work toward a common approach. Allowing materially different regimes to emerge across Canada would increase compliance complexity, create opportunities for regulatory arbitrage, and risk producing uneven investor protections based on jurisdiction.

1) The Claimed Investor Benefits Are Speculative

CIRO states that the proposed amendments will promote greater access to regulated advice by making it more financially viable for approved persons to enter or stay in the profession. However, the Consultation does not provide evidence that the IAP option will materially increase the availability or affordability of advice. The Consultation itself characterizes the impact on clients as "neutral." Given the lack of a demonstrated investor benefit and the potential investor harms discussed below, FAIR Canada is not persuaded that this speculative benefit outweighs the risks the proposal may create.

2) The Analysis Supporting the Proposal is Missing

The IAP framework is a significant departure from the existing regulatory model. However, the Consultation provides little information about the analysis CIRO undertook to assess its legal implications and impact on investor protection. Inserting a corporation into the dealer-advisor relationship adds a new layer that could affect important investor safeguards.

Additionally, it is unclear whether CIRO systematically reviewed its rulebook to assess how existing requirements applicable to approved persons would operate in the context of a corporate structure, and whether any gaps, inconsistencies, or unintended consequences could arise from introducing a corporation into the regulatory framework.

The IAP's status under securities legislation also remains unresolved. Although the proposal would bring IAPs into CIRO's regulatory framework as approved persons, the Consultation indicates that CIRO and the CSA are still considering whether IAPs should be exempt from registration or subject to a new category of non-individual registration. Until the intended approach and necessary statutory changes are identified, stakeholders do not have a complete picture of the legal and regulatory framework that would govern IAPs. These matters should be resolved and subject to public comment before the framework is finalized.

The Consultation also provides no insight into whether CIRO considered alternative approaches used in other regulated sectors or jurisdictions. It does not discuss whether CIRO examined

professional corporations in fields such as law and accounting, or approaches to advisor incorporation in jurisdictions such as Australia, the United Kingdom, and the United States. In the U.S., registered representatives may use personal services entities to receive transaction-based compensation without the entity itself registering as a broker-dealer, subject to conditions.[2] By contrast, CIRO's proposal integrates the IAP directly into the securities regulatory framework as an approved person. CIRO should provide its analysis of these other regimes and explain the rationale for its proposed approach.

Given the complexity of the proposed model, CIRO should also disclose whether it obtained an independent legal opinion assessing its implications. A comprehensive legal analysis would help stakeholders evaluate the proposal and confirm whether it can be implemented without creating unintended risks or weakening existing investor protections.

3) No Concrete Timelines Are Provided to Resolve This Long-Standing Issue

This issue of how securities registrants structure their businesses has been under consideration for nearly three decades, dating back to the CSA Distribution Structures Committee Position Paper published in 1999.[3] Since then, the CSA, CIRO, and CIRO's predecessor organizations have revisited it repeatedly, expending significant regulatory resources without reaching a harmonized solution. Past efforts have struggled to gain broad support among key stakeholders, including securities regulators, provincial governments, and industry participants.

Given the time and resources already devoted to this issue and the lack of a clear investor-protection benefit, the CSA and CIRO should publish a project plan outlining the key steps and timelines for implementing the chosen model. This would provide greater certainty and help ensure that this issue does not consume regulatory resources indefinitely.

B. Key Implementation and Investor Protection Issues

1) Publish the Complete Framework Before Proceeding

The proposal does not include the standardized agreements, accompanying guidance or legislative and regulatory amendments required to assess how the IAP framework would operate in practice and preserve investor protections. The Consultation acknowledges that implementing the proposal may require amendments to securities legislation and National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, but provides little insight into the nature or scope of those changes. As a result, stakeholders are being asked to comment on only part of the framework, without visibility into the contractual, interpretive, and statutory elements that would ultimately determine how the framework functions. This fragmented approach makes it impossible to evaluate the proposal in its entirety.

[2] Financial Industry Regulatory Authority, Regulatory Notice 26-12 - Guidance Regarding the Application of FINRA Rules in Relation to the SEC No-Action Letter on Personal Services Entities, June 9, 2026.
[3] CSA Notice - 33-304 - CSA Distribution Structures Committee Position Paper, August 6, 1999.

A significant missing component of the framework is the set of agreements and guidance governing its day-to-day operation. Mandatory standard-form agreements would establish a common contractual foundation across firms and jurisdictions, reduce uncertainty about the obligations of dealers and IAPs, and help ensure that clients receive equivalent protections regardless of where they reside or which dealer they use. Prescribing minimum terms in the CIRO Rules is not an adequate substitute, as firms would retain considerable discretion in how they structure the agreements, potentially resulting in inconsistent rights, obligations, and investor protections across firms.

CIRO should therefore develop and publish for comment the following mandatory, non-negotiable standard-form agreements governing the relationships among approved persons, dealers, IAPs, and CIRO:

- **A tri-party agreement among the approved person, the IAP, and the dealer**. Subsection 2305(6) of the proposed CIRO Rules identifies minimum terms for this agreement, which would define the legal and operational relationships at the core of the IAP framework. Given the agreement's central role in the framework, CIRO should develop and publish a standard-form agreement for public comment rather than leave its terms largely to individual dealers and IAPs. It should address the dealer's supervisory responsibilities, the ownership and control of books and records, permitted securities and non-securities activities, access to information, termination rights and obligations, the consequences of non-compliance, and the allocation of liability. It should also require the IAP to comply with all applicable dealer policies and procedures, including those governing business practices, compensation, client communications, books and records, record retention, privacy, cybersecurity, technology systems, conflicts of interest, and outsourcing arrangements. The Mutual Fund Dealers Association's (MFDA) directed commissions framework provides a useful precedent. It used a standard tripartite agreement to address key matters, such as liability, supervision, and access to books and records.[4]

- **A regulatory agreement between CIRO and the IAP**. This agreement should define the IAP's obligations and confirm CIRO's authority over its activities that fall within CIRO's jurisdiction. The agreement should require the IAP to comply with all applicable CIRO requirements and cooperate fully with regulatory oversight, including by producing records, responding to inquiries, submitting to examinations and investigations, and complying with disciplinary decisions. It should also require the IAP to notify CIRO and obtain CIRO's prior approval before any changes to its shareholders, and before engaging in any outside business activities. The agreement should ensure that interposing a corporation between the dealer and the approved person does not create gaps in CIRO's supervisory or enforcement authority.

We also recommend that CIRO adopt a standard practice of publishing any accompanying guidance for comment concurrently with proposed rule amendments so that stakeholders can better evaluate how the changes are intended to operate in practice.

[4] MFDA, Payment of Commissions to Unregistered Corporation, March 29, 2010.

2) Dealer Supervision and Oversight of IAPs

The proposed amendments extend a dealer's existing obligations under the CIRO Rules to supervise its business and operations to include the activities of IAPs. However, the proposal does not explain how dealers would be expected to discharge those obligations in practice. CIRO should publish detailed guidance for dealers outlining its supervisory expectations, including the controls, reporting arrangements, and escalation procedures dealers should implement.

CIRO should also clarify whether an IAP may establish any operating practices independently or whether all its systems, policies, and procedures must be approved by the dealer and remain subject to ongoing dealer supervision and access. Clear standards are particularly important for practices relating to cybersecurity, the collection, use, and protection of client information, and the maintenance and accessibility of books and records. The IAP should not have independent authority to establish or control any operational practices that are subject to CIRO requirements. Dealers should remain responsible and liable for all aspects of the IAP's operations related to regulated activities and retain sufficient oversight, access, and control to ensure compliance with applicable regulatory obligations.

Subject to dealer and CIRO approval, the proposal permits an IAP to engage in activities ancillary to those performed for its sponsoring dealer, as well as other activities in a "regulated Canadian financial services sector." However, the proposal does not define "ancillary" or explain which services would fall into that category. Nor does the definition of a regulated Canadian financial services sector provide sufficient clarity or certainty: it refers broadly to a sector subject to "adequate regulatory oversight," as determined at CIRO's discretion and identified on its website. This leaves key aspects of the framework, including the sectors, activities, and regulatory regimes that would qualify, to CIRO's future discretion, with no requirement that future changes be subject to public comment. CIRO should clearly define the scope of activities permitted under each category and the safeguards that would apply.

The proposal also requires greater clarity regarding the dealer's oversight of these activities. We recommend that CIRO's guidance explain how dealers are expected to monitor and supervise these other activities, including whether those obligations differ from the requirements governing an individual approved person's outside activities.

Finally, CIRO should clarify that any investment accounts owned or controlled by an IAP remain subject to the same personal trading controls, disclosure obligations, reporting requirements, and supervisory review that apply to accounts held by approved persons. Incorporation should not reduce the dealer's visibility into the advisor's trading activity or create a loophole in account supervision.

3) Liability and Investor Redress

A critical investor-protection issue is whether inserting an IAP between an approved person and the dealer could create uncertainty about the allocation of responsibility or weaken investors'

rights of redress. Proposed subsection 2305(6)(v)(b) requires the dealer to agree to be liable to clients and other third parties for the conduct of the approved person and the IAP in connection with activities performed on the dealer's behalf. However, dealer responsibility should not depend solely on a contractual commitment. CIRO's Rules, and any necessary legislative amendments, should expressly establish the dealer's responsibility for such conduct and ensure that the use of an IAP does not diminish investors' existing rights or remedies. The client agreement should reinforce that responsibility and preserve investors' contractual rights and remedies.

The Rules should also provide that any act or omission of the IAP that falls within CIRO's jurisdiction is deemed to be an act or omission of the approved person. Any necessary statutory amendments should similarly ensure that the IAP's conduct is attributed to the approved person for regulatory purposes. Incorporation should not dilute the individual's regulatory accountability or allow an approved person to avoid responsibility simply because conduct was carried out through the IAP. Together, these provisions would establish clear regulatory accountability for both the dealer and the approved person, and the client agreement would provide an additional layer of investor protection.

Uncertainty may arise where the dealer disputes whether particular conduct was undertaken on its behalf, particularly where the same IAP carries on both securities and non-securities activities. CIRO should clarify the circumstances in which conduct will be considered to have been undertaken on the dealer's behalf and therefore subject to CIRO's proposed responsibility framework, particularly where the distinction between dealer and non-dealer activities may not be apparent to clients. Where an IAP carries on activities regulated under another regime, such as insurance, responsibility and liability for those activities should continue to be governed by the applicable regulatory and legal framework.

The corporate structure should not increase the complexity, cost, or time required to obtain redress. Investors should be in the same position from a compensation and recovery perspective regardless of whether misconduct is committed through an IAP, by an employee advisor, or by an individual agent of the dealer. CIRO should obtain independent legal advice from experienced plaintiff-side securities counsel on whether the proposed structure could impair investor rights or remedies. CIRO should disclose any material findings, risks or concerns arising from that analysis to stakeholders, together with an explanation of how CIRO addressed them.

4) Custody of Client Property and Canadian Investment Protection Fund (CIPF) Coverage

CIRO should also address how dealers would ensure that IAPs do not receive, hold, or have custody of client cash, securities, or other client property. Although the proposed Rules prohibit IAPs from holding client property, the Consultation does not explain how dealers would monitor and enforce this requirement in practice. The issue becomes more complex because the proposal permits IAPs to engage in activities ancillary to those performed for their sponsoring dealer, as well as other activities in a regulated Canadian financial services sector. It is unclear whether IAPs would be permitted to receive or hold client property in connection with those non-securities activities. If so, it is difficult to see how clients could realistically be expected to separate assets

and transactions relating to dealer and non-dealer activities, particularly where both are provided through the same corporate entity. If, on the other hand, the expectation is that IAPs would be prohibited from holding client property in connection with any of their other financial services activities, it is unclear how CIRO could impose such a restriction, given that those activities fall outside CIRO's jurisdiction. Greater clarity is needed regarding the operation, supervision, and enforceability of these restrictions in practice.

If client assets are not clearly held and recorded by the dealer, the availability of CIPF coverage in the event of a dealer insolvency may be uncertain. CIPF eligibility is tied to accounts used solely for holding or trading securities or commodity and futures contracts. It is unclear what protections, if any, would apply to client property related to non-securities activities in the event of an insolvency. Investors may mistakenly assume that CIPF protection is available when it is not. The insolvency of First Leaside Securities Inc. illustrates the risks that can arise when investors do not understand which legal entity is responsible for their investment or what regulatory protections apply.[5] Many investors believed their investments were protected by the dealer's CIPF membership, but their claims were denied because the investments had been purchased through an affiliated entity and did not qualify for CIPF coverage. The First Leaside experience shows how confusion regarding legal entities and applicable investor protections can impair client outcomes in an insolvency.

5) Insurance Coverage

Proposed subsection 2305(6)(xii) requires dealers to maintain financial institution bond and insurance coverage for the approved person's and IAP's conduct relating to securities and derivatives activities conducted on the dealer's behalf. FAIR Canada agrees that appropriate insurance coverage is an important safeguard, but the proposal leaves gaps and unanswered questions.

First, the required coverage should extend to all activities performed on the dealer's behalf. CIRO should also consider how coverage would work where a claim involves both securities and non-securities activities conducted through the same IAP. Without clear rules, coverage gaps or disputes between insurers could arise.

Second, it is unclear whether dealers' existing financial institution bond and insurance policies contemplate approved persons operating through separate corporate entities, including whether coverage would extend to the acts and omissions of employees of an IAP. The IAP structure may introduce questions regarding coverage limits, exclusions, and the allocation of responsibility. CIRO should disclose whether it consulted insurers in developing the proposal and whether suitable coverage for IAPs and their employees is or would be readily available on commercially reasonable terms.

Finally, if an IAP conducts permitted non-securities activities that fall outside the dealer's insurance coverage, CIRO should require those activities to be covered by insurance. Dealers should be required to verify that such coverage is appropriate for the nature and scale of the

[5] In The Matter of An Appeal to the Appeal Committee of the Canadian Investor Protection Fund, February 3, 2015.

activities, remains in force, and clearly delineates its relationship with the dealer's insurance policies. This would help reduce uncertainty regarding the availability of compensation and avoid gaps in coverage.

6) Multi-Person IAP Structures and Compensation Arrangements

The proposal does not provide sufficient detail about how more complex corporate arrangements would operate in practice. Under existing directed commission models, multiple approved persons may be associated with a single corporation, and compensation may flow through multiple corporate entities. For example, a corporation associated with a branch manager may receive supervisory override compensation relating to several advisors, while those advisors direct their own commissions to separate corporations. The Consultation does not explain whether multi-advisor or multi-tiered corporate arrangements would be permitted under the framework or, if so, how supervision, liability, compensation flows, recordkeeping, and investor protections would work among the various parties.

Effective supervision of approved persons is a fundamental dealer responsibility and must remain clear and undiminished under the proposed framework. Interposing one or more IAPs, together with layered compensation arrangements, should not fragment accountability, obscure reporting lines, or interfere with the dealer's ability to monitor compliance by approved persons.

7) CIRO Approval and Ongoing Oversight

The Consultation should clarify the circumstances in which an IAP would require CIRO's approval, including:

- **Transactions affecting the IAP's status or ownership:** Whether prior CIRO approval would be required before an IAP winds up, is sold, amalgamates, or merges with another IAP.

- **Material changes to the approved arrangement:** Whether changes to an IAP's permitted activities or sponsoring dealer would require prior CIRO approval.

- **CIRO's continuing authority over an IAP's approval:** CIRO should have express authority to impose terms and conditions on, suspend, revoke, or otherwise withdraw an IAP's approval where the arrangement gives rise to investor-protection concerns. CIRO should also clarify the criteria and process it would use in exercising this authority.

8) Investor Understanding and Public Transparency

The IAP structure could create significant client confusion unless the relationship among the approved person, the IAP, and the sponsoring dealer is clearly and consistently presented. CIRO should establish detailed requirements governing how the IAP is identified in client communications and how responsibility for the advice and services provided is disclosed.

Proposed CIRO Rule 2281 raises important questions about the extent to which an IAP may develop and use its own branding. The rule permits an approved person, including an IAP, to conduct business under a trade name that is not owned by the dealer member or its affiliate with the dealer member's prior consent. CIRO should therefore clarify whether an IAP may use its own trade name, website, logo, email domain, social media accounts, or other branding when dealing with clients, including a trade name used for non-securities activities. Branding shapes clients' understanding of who they are dealing with and who is responsible for the advice they receive. Without appropriate restrictions and disclosure requirements, clients may reasonably, but incorrectly, believe that the IAP is an independent advisory firm rather than a corporation operating under a CIRO-regulated dealer's supervision. All communications should therefore prominently identify the sponsoring dealer, explain the IAP's relationship to the dealer and approved person(s), and distinguish activities subject to dealer supervision and CIRO oversight from those that are not.

CIRO should also maintain a publicly accessible register of IAPs. The register should identify each IAP's approved person(s), sponsoring dealer, ownership and control, permitted activities and jurisdictions, applicable terms and conditions, disciplinary history, and current and former legal and trade names. This information would help investors verify an IAP's regulatory status, understand the entities involved, and determine which firm is accountable for the services they receive.

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Thank you for considering our comments on this critical issue. As investor advocates, we appreciate the opportunity to share our perspective and help shape policies that put investors first. We welcome ongoing dialogue and collaboration with CIRO and other stakeholders to build fair, transparent, efficient, and resilient capital markets for all Canadians. If you would like to discuss our submission further, please reach out; we are committed to working together to support better outcomes for investors.

Sincerely,



Jean-Paul Bureaud
President, CEO and Executive Director
FAIR Canada | Canadian Foundation for the Advancement of Investor Rights