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**RE: Proficiency Assurance: The Next Phase – Consultation Relating to Expiry of CSI Contract**

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FAIR Canada is pleased to offer comments on the Investment Industry Regulatory Organization of Canada's ("IIROC") consultation 'Proficiency Assurance: The Next Phase – Consultation Relating to Expiry of CSI Contract' published on July 16, 2014 (the "**Consultation Paper**").

FAIR Canada is a national, charitable organization dedicated to putting investors first. As a voice of Canadian investors, FAIR Canada is committed to advocating for stronger investor protections in securities regulation. Visit [www.faircanada.ca](http://www.faircanada.ca) for more information.

**1. Executive Summary:**

- 1.1. The current proficiency framework was designed, many decades ago, around the sales process, for salespeople. The educational and professional standards for registrants need to be reviewed and revised. They are structured around the particular products representatives are permitted to sell, not the overall quality of advice provided to retail investors. The standards must be raised to align with the image of professionalism that registrants and their firms portray, as well as with the expectations investors have regarding regulatory requirements.
- 1.2. Most investors do not seek out an individual for a simple sales recommendation that falls within the representative's regulatory licence; they seek out advice for their particular financial needs. The appropriate minimum level of proficiency must take into account investors' needs and expectations.
- 1.3. FAIR Canada believes there is a need for a thorough, public review of proficiency standards for individuals and firms offering advice to retail investors. This review should include not only IIROC proficiency standards, but also those set by the Canadian Securities Administrators ("**CSA**"), the Mutual Fund Dealers Association of Canada ("**MFDA**"), and other financial service regulators as well. Such a review could be undertaken in conjunction with the introduction of a statutory best interest standard but should not be dependent upon such an initiative.

- 1.4. In FAIR Canada's view, individuals who offer investment advice that is not in the client's best interest should be required to call themselves salespeople and not use titles and financial designations that imply that the person is holding him or herself out as a professional providing investment advice.
- 1.5. FAIR Canada is concerned about public awareness of registrants' proficiency when they receive advice. Retail investors appear to have a low awareness or understanding of titles, designation, proficiency, and registration limitations as well as the duty owed to them by "advisors".
- 1.6. IIROC has not provided empirical data to support the existing proficiency standards and we are not aware of the availability of any such data. We believe the mystery shopping exercise will highlight the problems with the suitability standard and the proficiency level of registrants who market themselves as advisors. We are eager to see the results of the recent OSC/IIROC/MFDA mystery shopping exercise, which FAIR Canada anticipates will highlight some anecdotal weaknesses observed in the current licensing/proficiency system.
- 1.7. In FAIR Canada's view, in addition to increased proficiency standards, a best interest duty must be imposed upon registrants who provide advice to unsophisticated investors.
- 1.8. FAIR Canada believes that it is essential, in evaluating a proficiency assurance model, to not only compare the delivery models and costs, but also to compare the standards used within other jurisdictions and other regulatory regimes. FAIR Canada recommends that a benchmarking exercise be conducted in conjunction with the public consultation on proficiency that we recommend and that it be made public. FAIR Canada believes Canada is lagging behind other leading jurisdictions in the area of education and proficiency standards.
- 1.9. IIROC should ask whether it is appropriate for IIROC to contract out all of the following functions to a for-profit, contractual service provider:
  - prepare competency profiles (the lists of tasks and capabilities required of each approval category or licensed position);
  - provide courses;
  - create examinations; and
  - administer examinations.
- 1.10. We tend to agree with other comments that in assessing the different models or approaches one should make a distinction between the gatekeeper role of ensuring that minimum proficiency standards are appropriately set and met and the role of delivery of educational services.
- 1.11. FAIR Canada notes that, if it determines it would be appropriate to have multiple education services providers, it would be essential for IIROC to ensure a uniform minimum

level of proficiency for any particular registration category, adequacy of course materials and sufficient oversight of the level of rigour of the examinations. A race to the bottom in any of the essential functions would be detrimental to Canadian investors.

## 2. General Comments

- 2.1. FAIR Canada agrees with IIROC's view "...that high proficiency standards play a key role in investor protection and the integrity and efficiency of capital markets." It is essential that Registered Representatives have the proficiency necessary for the function they serve.
- 2.2. The current proficiency framework was designed, many decades ago, around the sales process, for salespeople. The educational and professional standards for registrants need to be reviewed and revised. They are structured around the particular products representatives are permitted to sell, not the overall quality of advice provided to retail investors. As we will further illustrate below, representatives are viewed by many retail investors to be trusted advisors. The standards must be raised to align with the image of professionalism that registrants and their firms portray, as well as with the expectations investors have regarding regulatory requirements.<sup>1</sup>

## 3. Investor Needs and Expectations

- 3.1. The decline in employer-sponsored pension plans (including a significant decrease in defined benefit plans<sup>2</sup> and the prevalence of defined contribution plans) has placed a considerable burden upon ordinary Canadians to ensure they adequately save and appropriately invest to ensure a financially secure retirement. People are also living longer and thus will need their investments to last longer. Investment decisions are critically important to Canadians' well-being.

### Investor Expectations and Reliance on Advice

- 3.2. Many investors rely heavily on the advice they receive in making investment decisions. According to research commissioned by the OSC's Investor Education Fund,

...advisors are the key influence in investor decision-making. Investors rely upon their advisor for planning and asset mix advice, as well as advice on what specific investments to buy. ...Investors trust their advisor to provide advice that benefits the client first. This trust is

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<sup>1</sup> We note, parenthetically, that FAIR Canada fully supports other initiatives to raise the standard of advice, including the introduction of a best interest duty. In our view, increased proficiency would be an element of an elevated duty to investors. For more information, see our February 2013 submission to the CSA: <<http://faircanada.ca/wp-content/uploads/2011/01/FAIR-Canada-Submission-re-CP33-403-Statutory-Best-Interest-Duty.pdf>>.

<sup>2</sup> Mark Wiseman, "18 Million Reasons to Get it Right" (Keynote Interview, delivered at the 15<sup>th</sup> Annual Portfolio Management and Market Structure Conference, 6 November 2014), [unpublished]. Mr. Wiseman indicated that only 12 percent of private sector workers have defined benefit plan coverage.

underpinned by a belief that their advisor has a legal responsibility to ‘put the client’s best interest first’.<sup>3</sup>

- 3.3. IIROC’s investor research noted that “[m]ost individuals seek an “advisor” because they feel that they do not have the knowledge, skill and/or time to properly manage their investments. Some of the individuals interviewed stated that they are looking for someone they can trust and rely on.”<sup>4</sup> Another investor survey found that “[m]ore than 8 out of 10 investors contacted their advisor to get planning or goal-related advice over the past two years – even more than to buy investments.”<sup>5</sup>
- 3.4. **Most investors do not seek out an individual for a simple sales recommendation that falls within the representative’s regulatory licence; they seek out advice for their particular financial needs.**

#### Confusion Surrounding Titles and Designations

- 3.5. As FAIR Canada noted in our earlier comments to IIROC, “[e]ven when not actively misleading or deceiving consumers, certain business titles and designations will give a consumer the impression that one is dealing with an “advisor” who is a professional and who will provide advice or recommend products that are in the best interest of the client as opposed to a “salesperson”.”<sup>6</sup>
- 3.6. The appropriate minimum level of proficiency must take into account investors’ needs and expectations. As IIROC found through investor research, “[m]ost of the individuals that were interviewed indicated that they did not perform any independent follow up or due diligence before selecting their advisor.”<sup>7</sup> This may be due to investors’ assumption (but uncertainty) “...that there is some oversight over the business titles and financial designations used by representatives.”<sup>8</sup> Other research conducted for the OSC’s Investor Education Fund found that “[w]hen asked what products their advisor can directly sell, the numbers reported are far off the actual incidence of the related licenses/registrations for financial advisors...”<sup>9</sup> IIROC’s 2011 Dealer Member survey of the use of business titles and financial designations reported that “...[m]any of these business titles do not, on their

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<sup>3</sup> The Brondesbury Group, *Investor behaviour and beliefs: Advisor relationships and investor decision-making study* (2012) (prepared for the Investor Education Fund), online: <<http://www.getsmarteraboutmoney.ca/en/research/Our-research/Documents/2012%20IEF%20Adviser%20relationships%20and%20investor%20decision-making%20study%20FINAL.pdf>> at page 2.

<sup>4</sup> Investment Industry Regulatory Organization of Canada, *IIROC Rules Notice 13-005 – Rules Notice – Request for Comments – Dealer Member Rules – Use of Business Titles and Financial Designations* (January 8, 2013), online: <[http://www.iiroc.ca/Documents/2013/4e2e7417-7b4b-43d6-a47a-e14a9d7cb7f8\\_en.pdf](http://www.iiroc.ca/Documents/2013/4e2e7417-7b4b-43d6-a47a-e14a9d7cb7f8_en.pdf)> at page 5.

<sup>5</sup> *Supra* note 3.

<sup>6</sup> FAIR Canada, *RE: IIROC Request for Comments re Use of Business Titles and Financial Designations* (March 9, 2013), online: <<http://faircanada.ca/wp-content/uploads/2011/01/FAIR-Canada-comments-re-Use-of-Business-Titles-and-Financial-Designations.pdf>> at page 2.

<sup>7</sup> *Supra* note 4.

<sup>8</sup> *Ibid.* at page 6.

<sup>9</sup> *Supra* note 3.

own, provide a meaningful description of the type of services and/or investment products that a licensed representative can offer to a client.”

- 3.7. IIROC research also found that “...very few firms provide clients with any explanation of what these financial designations mean in practice.”<sup>10</sup> FAIR Canada wrote an open letter to CSA members in early 2013, encouraging the CSA to “take steps to address the confusion caused by the use of misleading titles and designations in respect of all registrants. In the interests of investor protection, titles and designations should be meaningful and representative of an individual’s proficiency and position...”<sup>11</sup> We note that IIROC has provided a glossary as a result of its review of business titles and designations, but this is merely disclosure through access rather than delivery and one must ask: Does the online glossary help investors when they walk into an investment dealer and speak to a representative? Are most consumers aware of the glossary? If so, do they use it?

#### Education, Training and Experience a Reasonable Person Would Consider Necessary

- 3.8. National Instrument 31-103 provides that “[a]n individual must not perform an activity that requires registration unless the individual has the education, training and experience that a reasonable person would consider necessary to perform the activity competently.” In light of the foregoing investor needs, expectations, and confusion about titles and designations, it is essential that proficiency standards are reworked and set to meet the basic needs and expectations of retail investors.

#### Public Review Essential

- 3.9. **FAIR Canada believes there is a need for a thorough, public review of proficiency standards for individuals and firms offering advice to retail investors.** This review should include not only IIROC proficiency standards, but also those set by the CSA, the MFDA, and other financial service regulators as well. Such a review could be undertaken in conjunction with the introduction of a statutory best interest standard but should not be dependent upon such an initiative.
- 3.10. In FAIR Canada’s view, individuals who offer investment advice that is not in the client’s best interest should be required to call themselves salespeople and not use titles and financial designations that imply that the person is holding him or herself out as a professional providing investment advice.
- 3.11. We agree with the Ontario Securities Commission’s (“OSC”) Investor Advisory Panel that “[a] robust investor protection regime includes high regulatory standards of business practices, proficiency standards that are suitable for professionals who provide advice, not

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<sup>10</sup> *Supra* note 4.

<sup>11</sup> FAIR Canada, Open Letter *RE Misleading Use of Business Titles and Financial Designations* (April 26, 2013), online: <<http://faircanada.ca/wp-content/uploads/2011/01/130426-Letter-to-CSA-re-Misleading-Titles-and-Designations.pdf>>.

salespersons, and conflict of interest requirements that ensure advisors' and clients' interests are aligned."<sup>12</sup>

#### Other Related Regulatory Initiatives

3.12. We understand from the OSC's 2014-2015 Statement of Priorities that the OSC is "...reviewing the impact that advisor titles and proficiency standards have on investor protection as part of our Best Interest Duty initiative." We also understand from the OSC's Report on Statement of Priorities for fiscal 2013-2014 that "Research was completed on proficiency standards in Canada, the US, the UK and Australia to inform our thinking on potential changes to our standards." The Statement of Priorities states that

[a] well-functioning investor/advisor relationship is critical to the economic well-being of Ontarians and ultimately to achieving healthy capital markets. The OSC will need to promote a framework that protects investors, where reliance by investors on their advisors is well placed, the advice being provided is suitable and any conflicts are managed appropriately.<sup>13</sup>

3.13. FAIR Canada recommends that this review include IROC and MFDA proficiency standards and result in a public report on the findings. Following the public report, FAIR Canada recommends that the CSA conduct a public consultation on recommendations arising as a result of the findings.

3.14. The Ontario Government is also examining proficiency in the context of financial planning. According to the 2014 Ontario Budget, the Ontario government is currently examining the need for regulation of individuals who offer financial advice and planning services.<sup>14</sup>

3.15. While we recognize that courses are revised and updated periodically, we believe a more fundamental review is warranted in respect of both initial and ongoing proficiency requirements for all individuals holding themselves out to retail investors as providing "advice". In particular, it is essential to determine the needs of investors at the outset of any such review.

#### **4. Current Proficiency Standards for IROC Registered Representatives**

4.1. As we noted above, National Instrument 31-103 provides that "[a]n individual must not perform an activity that requires registration unless the individual has the education,

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<sup>12</sup> Connie Craddock, Letter to Robert Day (June 1, 2014), online: <[https://www.osc.gov.on.ca/documents/en/Securities-Category1-Comments/com\\_20140601\\_11-769\\_craddockc.pdf](https://www.osc.gov.on.ca/documents/en/Securities-Category1-Comments/com_20140601_11-769_craddockc.pdf)>.

<sup>13</sup> Ontario Securities Commission, *OSC Notice 11-770 – Notice of Statement of Priorities for Financial Year to End March 31, 2015* (June 26, 2014), online: <[http://www.osc.gov.on.ca/documents/en/Securities-Category1/sn\\_20140626\\_11-770\\_sop-fiscal-2014-2015.pdf](http://www.osc.gov.on.ca/documents/en/Securities-Category1/sn_20140626_11-770_sop-fiscal-2014-2015.pdf)>.

<sup>14</sup> Ontario Ministry of Finance, *2014 Ontario Budget: Budget Papers* (Toronto: Queen's Printer, 2014), online: <[http://www.fin.gov.on.ca/en/budget/ontariobudgets/2014/papers\\_all.pdf](http://www.fin.gov.on.ca/en/budget/ontariobudgets/2014/papers_all.pdf)> at page 312.



training and experience that a reasonable person would consider necessary to perform the activity competently.” FAIR Canada questions whether many registrants (but particularly those who are registered as only dealing in mutual funds, scholarship plans, or exempt market products) have such education, training and experience to perform the activity expected by reasonable investors.

4.2. According to IIROC Notice 13-0005,

[n]o IIROC approved person should hold his or herself out to the public in any manner, including without limitation, by the use of a business title or designation of qualifications or professional experience that deceives or misleads, or could reasonably be expected to deceive or mislead, a client or any other person as to their proficiency or qualifications.<sup>15</sup>

Registered Representatives<sup>16</sup>

4.3. The proficiency requirements for an IIROC-approved Registered Representative are successful completion of the following requirements:

- Canadian Securities Course (approximately 135-200 hours of study and two 2-hour multiple choice exams; passing grade of 60%);
- Conduct and Practices Handbook Course (approximately 40-55 hours of study and one 3-hour multiple choice exam; passing grade of 60%); and
- a 90-day training programme during which time he or she has been employed with a Dealer Member firm on a full-time basis.

4.4. Within 30 months of approval, Registered Representatives must successfully complete the Wealth Management Essentials course (approximately 110-160 hours of study and two 3-hour multiple choice exams; passing grade of 60%).

Registered Representatives (mutual funds only)<sup>17</sup>

4.5. The proficiency requirements for an IIROC-approved Registered Representative dealing only in mutual funds is successful completion of one of the following:

- The Canadian Securities Course (approximately 135-200 hours of study and two 2-hour multiple choice exams; passing grade of 60%);
- The Canadian Investment Funds Course administered by IFIC (approximately 60-90 hours of study and one 3-hour exam; passing grade of 60%);

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<sup>15</sup> *Supra* note 4.

<sup>16</sup> Investment Industry Regulatory Organization of Canada, *IIROC Dealer Member Rule 2900*, Part I, section A.3.

<sup>17</sup> *Ibid.*, Part I, section A.4.

- The Investment Funds in Canada Course administered by CSI Global Education Inc. and previously The Institute of Canadian Bankers (approximately 90-140 hours of study and one 3-hour exam; passing grade of 60%); or
- The Principles of Mutual Funds Investment Course administered by CSI Global Education Inc. and previously The Institute of Canadian Bankers (no longer offered by CSI Global).

#### Continuing Education

- 4.6. In general, a continuing education program requires individuals who are registered to do retail business and give advice to complete a 12-hour Compliance course and a 30-hour Professional Development course during a set three-year cycle.

### **5. FAIR Canada Comments on Current Proficiency Standards**

#### Empirical Data on Proficiency Standards Needed

- 5.1. IIROC has not provided empirical data to support the existing proficiency standards and we are not aware of the availability of any such data. We believe the mystery shopping exercise will highlight the problems with the suitability standard and the proficiency level of registrants who market themselves as advisors. We are eager to see the results of the recent OSC/IIROC/MFDA mystery shopping exercise, which FAIR Canada anticipates will highlight some anecdotal weaknesses observed in the current licensing/proficiency system.
- 5.2. Given the proliferation of investment products and the growing complexity of both investment product features and investor needs, in evaluating proficiency assurance it is essential to ask whether current proficiency standards are adequate. As noted above, we believe that a thorough review of proficiency framework is needed.
- 5.3. FAIR Canada also questions whether the foregoing minimum requirements are adequate in light of the trust and reliance placed in representatives by ordinary investors. In FAIR Canada's view, in addition to increased proficiency standards a higher, overarching standard – a best interest duty – must be imposed upon registrants who provide advice to investors.

#### Low Public Awareness of Proficiency

- 5.4. FAIR Canada is concerned about public awareness of registrants' actual current level of proficiency when they receive advice. As noted above in sections 3.5-3.7, retail investors appear to have a low awareness or understanding of titles, designation, proficiency, and registration limitations. Would an investor who is fully informed of proficiency requirements (and registration limitations) and is aware of the full range of investment products (including their features and costs) consciously choose to seek advice from a representative who has proficiency in mutual funds only? FAIR Canada believes investors



do not understand the limitations of registration categories and are unaware of the associated proficiency standards.

#### Proficiency Should be Increased

- 5.5. FAIR Canada believes proficiency for registrants should be increased. There appears to be industry support for such a suggestion, including comments from Greg Pollock, president and CEO of Advocis, who has called for at least one year of post-secondary education as an entrance requirement. He was quoted as saying, “That’s not a high bar but let’s start somewhere.”<sup>18</sup> We note that IIROC’s proficiency standards currently do not even require a high school diploma (or equivalent).

#### Shorter Cycle Suggested

- 5.6. FAIR Canada also questions the efficacy of a three-year continuing education cycle. We expect that this results in an inclination to put off fulfillment of continuing education requirements to the end of the third year. A shorter cycle would ensure that continuous education is undertaken more regularly.

### **6. Other Proficiency Standards**

- 6.1. FAIR Canada believes that it is essential, in evaluating a proficiency assurance model, to not only compare the delivery models and costs, but also to compare the standards used within other jurisdictions and other regulatory regimes (in this case, in particular other financial services regulatory authorities).
- 6.2. We were disappointed that no such benchmarking information was included in the Consultation Document. We note that many jurisdictions and regulatory authorities have considerably higher standards. These include certain registration by the Autorité des marchés financiers; the U.K. Financial Conduct Authority (new requirements under its Retail Distribution Review); the requirements of the Australian Securities and Investments Commission; and others.
- 6.3. FAIR Canada recommends that a benchmarking exercise be conducted in conjunction with the public consultation on proficiency that we recommend and that it be made public. FAIR Canada believes that Canada is lagging behind other leading jurisdictions in the area of education and proficiency standards. For example, the UK under its Retail Distribution Review not only banned embedded third party commissions but also reviewed and increased proficiency standards.<sup>19</sup>

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<sup>18</sup> Evelyn Juan, “Regulator to propose requirements for MFDA advisors” *Advisor.ca* (November 6, 2014), online: <http://www.advisor.ca/news/industry-news/regulators-to-propose-professional-requirements-for-mfda-advisors-168793>.

<sup>19</sup> See online: <http://www.fca.org.uk/your-fca/documents/policy-statements/fsa-ps11-01>.

## 7. Appropriate Roles for IIROC and Service Providers

7.1. IIROC should ask whether it is appropriate for IIROC to contract out all of the following functions to a for-profit, contractual service provider:

- prepare competency profiles (the lists of tasks and capabilities required of each approval category or licensed position);
- provide courses;
- create examinations; and
- administer examinations.

We tend to agree with other comments that in assessing the different models or approaches one should make a distinction between the gatekeeper role of ensuring that minimum proficiency standards are appropriately set and met and the role of delivery of educational services.

7.2. FAIR Canada notes that, if IIROC determines there should be multiple education services providers, it would be essential for IIROC to ensure a uniform minimum level of proficiency for any particular registration category, adequacy of course materials and sufficient oversight of the level of rigour of the examinations. A race to the bottom in any of the above essential functions set out in paragraph 7.1 above would be detrimental to Canadian investors.

7.3. It is IIROC's (and other regulators') job to set standards and ensure that potential registrants demonstrate adequate competencies prior to registration in order to adequately protect investors and ensure fair and efficient markets. In the Consultation Paper, IIROC sets out a summary of the different models used to accomplish this through the example of the Financial Industry Regulatory Authority in the United States, the Financial Conduct Authority in the UK and the CSA among others.

7.4. While this information is helpful, it does not provide enough detail to be able to assess the merits of one model over another. There is an absence of criteria provided against which the models are to be assessed. FAIR Canada recommends that IIROC indicate the criteria it will use or factors against which it will compare when contemplating reform in this important area. For example, which of the models, including IIROC's existing model, allows the regulator to adjust the course materials and requirements in a timely manner (or in the timeliest fashion) to reflect regulatory and marketplace reforms or developments?

7.5. FAIR Canada notes the importance of direct regulatory communications to registrants, including webcasts and guidance. These materials are particularly important where weaknesses are identified or new information comes to light. IIROC notes that it "continued to develop various member education webcasts and guidance focused on important investor-related topics such as accredited investors, borrowing to invest, distribution of non-arm's length investment products and compensation structures." We

support ensuring that any chosen model allows IIROC to provide a quick and timely response to identified areas of concern.

We thank you for the opportunity to provide our comments and views in this submission. We welcome its public posting and would be pleased to discuss this letter with you at your convenience. Feel free to contact Neil Gross at 416-214-3408 ([neil.gross@faircanada.ca](mailto:neil.gross@faircanada.ca)), Marian Passmore at 416-214-3441 or Lindsay Speed at 416-214-3442 ([lindsay.speed@faircanada.ca](mailto:lindsay.speed@faircanada.ca)).

Sincerely,



Canadian Foundation for Advancement of Investor Rights