

January 19, 2015

Mr. Bill Rice
Chair, Canadian Securities Administrators & CSA Commission Chairs
Tour de la Bourse
800, Square Victoria, Suite 2510
Montreal, QC H4Z 1J2
Sent via e-mail to: csa-acvm-secretariat@acvm-csa.ca

RE: Client Relationship Model (Phase 2) – Implementation Dates

FAIR Canada has been asked by the CSA's CRM2 Committee to provide its views on a request by the Investment Industry Association of Canada ("IIAC") for a delay in the implementation of the cost and performance reporting requirements set out in CRM2.

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

IIAC has requested that the implementation date of July 15, 2015 for certain CRM2 requirements should be extended until January 1, 2016 and that the implementation date for the cost and performance reporting requirements should be extended until January 1, 2017 so that the first set of performance and cost reports would be delivered to investors in January 2018.

At IIAC's request, FAIR Canada attended a meeting on December 4, 2014 to hear a presentation explaining why IIAC contends the implementation date must be delayed. In addition, to better understand IIAC's position, FAIR Canada has reviewed their letter to IIROC dated November 17, 2014 and their letter to the CSA dated December 20, 2014.

FAIR Canada does not agree that there should be a delay in the implementation of CRM2. We are of the view that the facts and arguments put forward by IIAC do not establish that there is insufficient time to successfully implement CRM2's requirements within the existing timeframe. It is not enough to show that some problems have arisen causing delays on some fronts. Absent clear demonstration that additional resources cannot be marshaled to still get the job completed on schedule, IIAC has not put forth any justification to warrant regulators taking the extraordinary step of delaying CRM2 implementation.

FAIR Canada supports the proposed cost disclosure and performance requirements. It is critical that this information get into the hands of investors without further delay so that investors can

have the answer to two key questions they need to know: (1) How did my investments perform? and (2) How much did it cost me?

Given the asymmetry of information and resources between financial intermediaries and retail investors, a responsibility must be placed on financial intermediaries to promote the financial awareness of their clients by providing clear, complete and meaningful cost disclosure and account performance reporting. This obligation is contained in the G20's High-Level Principles on Financial Consumer Protection, endorsed by Canada's Finance Minister¹. We fully support the commitment that regulators have made to the provision of this crucial financial information to financial consumers. Financial intermediaries (i.e., investment dealers) have a responsibility to ensure that the cost disclosure and performance reports are produced for investors in a manner that is clear and comprehensible, and it should be delivered to investors within the existing timelines. **There is a significant cost to investors if this information remains withheld from them and they are left in the dark.**

Below, FAIR Canada sets forth its position on the main arguments made by IAC in its request for an extension of time.

1. Delay until 2018 is not warranted by IAC's arguments about mid-year implementation, is not in investors' interests, and is not in the public interest

- 1.1. Issues about the impracticality of a mid-year implementation should not be laid at the regulators' feet, nor are those issues grounds for delaying CRM2. The practical implications of implementing in mid-year rather than at year-end would have been apparent immediately when the CRM2 timeframe was announced in March 2013.² It is reasonable to presume, therefore, that IAC members understood from the start that aiming for implementation at the latest possible time (i.e., July 2016) would be problematic, and therefore they knew their project management should be designed to ensure they will be in position to collect all

¹The "G20 High-Level Principles on Financial Consumer Protection" (October, 2011), which were endorsed by the G20 Finance Ministers, including Canada's Finance Minister, has as one of its principles 'Financial Education and Awareness'. It states that "Financial education and awareness should be promoted by all relevant stakeholders... Appropriate mechanisms should be developed to help existing and future consumers develop the knowledge, skills and confidence to appropriately understand risks, including financial risks and opportunities, make informed choices, know where to go for assistance, and take effective action to improve their own financial well-being... All relevant stakeholders should be encouraged to implement the international principles and guidelines on financial education developed by the OECD International Network on Financial Education (INFE)." Principle 6 of the OECD's Principles and Good Practices for Financial Education Awareness (July 2005) reads:

"6. The role of financial institutions in financial education should be promoted and become part of their good governance with respect to their financial clients. Financial institutions' accountability and responsibility should be encouraged not only in providing information and advice on financial issues, but also in promoting financial awareness [of their] clients, especially for long-term commitments and commitments which represent a substantial proportion of current and future income."

²The CSA made it clear in 2012 that it would give the industry three years to implement the CRM2 Requirements. The CSA published the final amendments to National Instrument 31-103 on March 28, 2013 advising stakeholders that the amendments would formally take effect on July 15, 2013 and that these were the final rules that would apply.

necessary information as of January 1, 2016 and produce and deliver 12-month performance and cost reports in January 2017.

- 1.2. FAIR Canada believes, therefore, that most IIAC members likely are not aiming for a July 2016 implementation and consequently are not affected by concerns over mid-year implementation.³ As for any members who willfully chose mid-2016 as their implementation date, or any who may have put themselves in that position by delaying CRM2 planning, it is disingenuous to suggest they are somehow being compelled to produce non-calendar year reports.
- 1.3. Furthermore, even if a dealer fails to implement as of January 1, 2016 and, as a result, produces a non-calendar year report, there is no reason why that dealer cannot transition to calendar year reporting thereafter simply by providing a 12-month report that partially overlaps the first one.⁴ While this may not be elegant, FAIR Canada believes it can be accomplished without confusing investors if an adequately clear explanation accompanies the second report.
- 1.4. Given the availability of this option, FAIR Canada does not agree with IIAC's assertion that dealers might be compelled to provide confusing reports covering a 17.5-month period. FAIR Canada disagrees that there ever would be a need to produce such a report. The only regulatory requirement, as far as we see, is for a 12-month report.
- 1.5. With the existing timeline in place, investors will receive the information by January 2017 (or, at the latest, July 2017) and can receive calendar year reporting so as to make comparisons from one year to the next possible.

2. IIAC's lobbying to deviate from the CSA's rules (by seeking to substitute tax cost for performance reporting) is contrived and should not be permitted to delay CRM2

- 2.1. IIAC has expended significant efforts on lobbying to have the book cost be the client-specific tax cost, as calculated for tax purposes, and for this to be the single position cost number in CRM2 performance reports. FAIR Canada believes this is a contrived "red herring" that has unnecessarily delayed progress on CRM2 implementation, and it is inappropriate for IIAC to argue that more time is needed to resolve an artificial complication arising solely by virtue of IIAC's own lobbying.⁵

³ It is FAIR Canada's understanding, from anecdotal sources, that the banks and many large firms are ready to implement now or are confident they will be ready on time. The relatively low response rate from IIAC's survey of its members on this issue (49/106 surveyed) suggests that the issue is not of huge concern to its members. IIAC's Letter to Bill Rice, Chair, CSA and CSA Commission Chairs dated December 20, 2014, Attachment 4, at page 21.

⁴ For example, if a dealer produces a non-calendar first report for the period July 1, 2016 to June 30, 2017, their second report could be for the calendar year January 1, 2017 to December 31, 2017. The two reports would overlap for 6 months (January through June 2017), but both reports would allow the client to see and assess annualized performance and costs.

⁵ As set out in the CSA Notice dated March 28, 2013, IIROC and the MFDA can have their own set of rules that must be materially harmonized with the CSA CRM2 Rules for the CSA rules not to apply. FAIR Canada is of the

- 2.2. The definition of book cost for performance reporting purposes does not need to be the same as that for tax purposes. Indeed, since tax reporting requirements are designed to effect public policy objectives unrelated to investment performance, it would be unwise to link the two. Using tax reporting requirements may distort the performance picture. The CSA made this determination in 2013.
- 2.3. Accordingly, FAIR Canada believes no consideration should be given to delaying CRM2 over this artificially manufactured issue. Alternatively, if it must be addressed at all through CRM2, there is no need to await a decision on using tax cost as the sole reporting number. A better way would be to build into the project an additional field showing the tax cost, thereby providing this information for those investors who feel they need it, while still giving all investors cost position information best suited to determining performance.⁶
- 2.4. FAIR Canada's understanding is that many investors do not require tax cost information as they hold their securities in tax-free accounts such as RRSPs, RESPs and TFSAs. For those investors who have taxable accounts and need this information for tax purposes⁷ - many of whom are likely to be relatively high net worth individuals served by accountants - presentation of the tax cost information in a separate section of the reporting will not give rise to investor comprehension difficulties.
- 2.5. Even for average investors, reporting both tax cost and original (or book) cost need not be confusing. It will not be confusing if the tax information is clearly labeled and explained, including an explanation (in general terms and plain language) stating why the values may differ from the cost values in the performance report, and to what use the tax cost figures should be put. The reports could also advise readers to seek assistance from a tax professional in order to address their own personal tax situation.
- 2.6. FAIR Canada believes, therefore, that there is no need for CRM2 implementation to await resolution of the tax cost issue IIAC has contrived. Tax cost reporting can easily be provided as an add-on. There is no need to purge or overwrite existing data as IIAC claims, and the add-on approach would also address the issue for the small number of investors who might wish to have their dealer adjust book cost in a specific manner to reflect their own personal tax elections.
- 2.7. FAIR Canada does not agree that the dealer should ever have discretion to adjust the position cost information as it sees fit in accordance with its "professional judgment" (with this being the sole cost position number provided to clients). Such an arrangement could undermine the purpose of CRM2 since it would enable inappropriate tweaking of cost

view that IIAC has spent significant time, in the IIROC rule harmonization consultation process, seeking to amend rather than harmonize with what the CSA has issued as final rules.

⁶ FAIR Canada recommended this approach in our submission to the CSA dated September 23, 2011 at section 8, available online at <http://faircanada.ca/wp-content/uploads/2011/01/FAIR-Canada-comments-re-cost-disclosure-performance-reporting-Sept.-23-2011.pdf>.

⁷ IIAC states in their December 20, 2014 letter that client-specific tax election changes are only processed "for a relatively low number of full-service broker clients in any given year" - see page 3, section 4.

information by dealers so as to inflate performance numbers. It also would prevent effective comparability between dealers or even between calendar years.

3. No reason the project cannot get done on time given the industry's proficiency in data systems

- 3.1. FAIR Canada does not believe the requirements to implement CRM2 are unduly complex. CRM2 requires data systems reconfiguration and integration. No doubt some of that is technically challenging. However, it bears remembering that the project ultimately consists of simply delivering two reports - the cost report and the performance report - with the necessary information that they are required to contain.
- 3.2. IIAC's members clearly possess (or have access to) tremendous proficiency in data systems development and implementation. They operate powerful data systems designed for both retail and institutional trading, and being in a competitive marketplace, many continually improve those systems. To all appearances, these systems enhancements are developed and launched within timeframes much shorter than the three years allocated for CRM2 implementation. FAIR Canada believes, therefore, that the challenges presented by CRM2 are well within the industry's capabilities.
- 3.3. FAIR Canada also disagrees with IIAC's assertion that the investment industry's structure "complicates major change in a way that does not apply to projects in other industries." Dealers interact with three major data service providers. That is not a large number. Nor has it been shown that the need to deal with three of them actually has delayed progress on CRM2 implementation. IIAC has provided no evidence demonstrating it. Equally, no actual nexus has been shown linking claimed CRM2 implementation problems with the fact that the industry's various introducing brokers interact with 9 different carrying brokers.
- 3.4. IIAC writes that the project has been slowed by dealers and their consultants having differing views on various aspects of the project.⁸ This could hardly have been unexpected. FAIR Canada believes, therefore, that IIAC's members likely have incorporated significant conceptualization and team consensus-building time into their project planning, in accordance with good project management practice.
- 3.5. Likewise, we expect that IIAC members have worked together on this project and have shared resources and information as much as possible to decrease costs and save time, even though, as IIAC notes, "each dealer's solution will be unique to its current technology platforms."⁹ Presumably this co-operation and harmonization will continue for the duration of the project. Presumably also it will be deployed, if necessary, to increase members' bargaining power with the three large data service providers and with all other outside technology contractors in order to secure their prompt assistance. While dealers may be

⁸ Ibid., at page 8.

⁹ Ibid., at page 11.

competitors, there is no reason that it would not be in their mutual interest to adopt common solutions and join forces to bargain with more economic power.

- 3.6. There is still a lot of time left in the existing timeframe. Absent convincing and verifiable evidence to the contrary, there is no reason to believe that the project cannot be completed on time if best efforts are made and sufficient resources (both human and economic) are allocated to getting it done.

4. More time should not be granted for dawdling dealers to learn about CRM2 or for advisors to figure out what to tell clients

- 4.1. It is no answer to say that some firms underestimated the challenges they would face because they were unfamiliar with CRM2's details or did not understand the details well.¹⁰ FAIR Canada believes this is unacceptable and does not warrant asking regulators to delay implementation of CRM2. Instead, regulators should admonish those firms and insist that they allocate the resources necessary to catch up.

- 4.2. Equally, it is ludicrous to argue that CRM2 should be delayed in order to give additional time "for advisors to see client reports and feel comfortable they can answer any client questions"¹¹ and to give "some more time for investment advisors to assess changes to their clients' statements and reports to better explain them to clients, and for clients to be able to absorb the many changes."¹² IIAC members and their advisors should be fully able to explain to clients *right now* exactly how the investments in their accounts have performed and exactly how much they paid for their advisor's services. There should be no need for additional time so that advisors can learn those things. They are supposed to know it irrespective of CRM2, and implementation should not be delayed in order to give advisors time to be coached or to get "comfortable" talking about it.

- 4.3. Delaying implementation also will not give investors more time to absorb the changes. Most investors will not know about any changes until they receive the two reports and get the information in their hands. Even sophisticated investors do not necessarily know about CRM2 or know what information to ask for. This is the underlying reason why the information has been mandated.

5. Other initiatives are not an excuse for delaying CRM2

- 5.1. IIAC has argued that CRM2 should be delayed because IIAC members are busy working on other regulatory initiatives.¹³ This simply should not be permitted to be used as an excuse

¹⁰ Ibid., at page 9.

¹¹ Ibid., at page 13.

¹² Ibid., at page 14.

¹³ For example, in its letter to IIROC dated November 17, 2014, IIAC argues that it cannot create a separate field of information for tax cost in the time period remaining "given all of the other mandatory regulatory changes our members are working on". IIAC provides no specifics as to what they are referring to or why resources cannot be allocated to CRM2. See also the section on "More new rules a distraction" at page 17 of their letter to the

CSA dated December 20, 2014.

for not meeting the deadline set. All businesses and organizations face competing priorities and many have complex legal and regulatory obligations they must meet.

6. **Granting an extension will likely be counterproductive**

- 6.1. FAIR Canada cautions that granting more time is often not effective in getting a project completed or getting a better project outcome. Adding time risks enabling ongoing design tinkering, continued procrastination, and sub-contractors drifting toward engagement in other projects instead of focusing on completion of the task at hand. It also exposes the project to harmful impacts from new events that occur past the original deadline.
- 6.2. Generally, what gets a stalled project completed is not additional time, but rather additional resources and determination. If there is a lack of enthusiasm for this project, as is likely the case with some IIAC members, then it can be expected that they will not devote the resources needed to get the job done until regulators insist.

As we have noted above, there is still a lot of time left in the existing timeframe and no reason has been given why the project cannot be completed on time if best efforts are made and sufficient resources (both human and economic) are allocated to getting it done. IIAC has failed to show that additional resources cannot be marshaled to still get the project completed on schedule, and therefore IIAC has not put forth any justification to warrant regulators taking the extraordinary step of delaying CRM2 implementation.

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) or Marian Passmore at 416-214-3441 (marian.passmore@faircanada.ca).

Sincerely,



Canadian Foundation for Advancement of Investor Rights

cc: Kim LaChapelle, for CSA-ACVM Member Commission Chairs
Chris Jepson, OSC for CSA CRM2 Committee
Richard Corner, IIROC
Karen McGuinness, MFDA