

FAIR Canada proposes review of the fundamental approach to self-regulation of Canada's securities markets

FAIR

Canadian Foundation for
Advancement of Investor Rights
Fondation canadienne pour l'avancement
des droits des investisseurs

TORONTO, March 31, 2020 (GLOBE NEWSWIRE) -- In light of concerns about the role and effectiveness of self-regulatory organizations (SROs), FAIR Canada proposes that the Canadian Securities Administrators (CSA) conduct a broad and thorough review of the regulatory framework that governs the SROs for mutual fund dealers, investment dealers and marketplaces, the Mutual Fund Dealers Association (MFDA) and the Investment Industry Regulatory Organization of Canada (IIROC).

The CSA review announced in December 2019 should examine the reasoning that underpins the current SRO framework and whether that framework has been working in the public interest. The authorities have not assessed Canada's SRO system for many years, and not comprehensively since the creation of IIROC and the MFDA.

FAIR Canada's questions include: What is the appropriate amount of reliance on SROs? How should the CSA address the inherent conflicts of interest between the SROs mandates to regulate in the public interest and promote investor protection while being responsive to the needs of their members, the securities industry dealers and marketplaces? Are there concrete actions the SROs can take that will convince the public that it takes its responsibility to act in the public interest seriously and not simply paying lip service?

"The SROs' current practices in areas like governance, transparency and enforcement raise important concerns. If the regulatory system is to continue to rely on SROs, improvements in those areas are needed", says Douglas Walker, Deputy Director at FAIR Canada.

Governance

There is a conspicuous absence of directors on the boards of the SROs today with experience and credibility in individual investors' concerns. Recently, IIROC announced plans to improve representation of directors with hands-on consumer or seniors' experience. This initiative is welcome but it remains to be seen whether this translates into changes in governance structure that provide genuine retail investor representation or whether it's merely window dressing in the face of the CSA review.

An improved SRO governance structure might result in a SRO board of directors that looks like this ~ 6 industry and former industry directors who represent the interests of the securities industry (dealers and marketplaces), and 6 public directors who represent the interests of retail investors, institutional investors and securities

regulation experts.

Enforcement, Supervision & Compensation

Enforcement hearings should be open to the public including hearings regarding proposed settlements. There should also be transparency in each case around why the SRO is not bringing charges for lack of supervision of salespersons or traders who engage in misconduct. Additionally, the SRO should in all cases be disclosing whether the firm has compensated investors who suffered harm.

Use of Enforcement Fines

The CSA should ensure that fines collected by the SROs for misconduct impacting retail investors, do not end up subsidizing the industry firms in the fees paid by dealers for SRO operations, including the firms involved in the misconduct.

Consultation on Regulatory Policy

In early March, IIROC announced it was forming an "expert investor issues panel" to obtain feedback from people with expertise in investor and consumer issues. We applaud this initiative and plan to provide our input to IIROC on the panel's role and processes. However, this concept is not yet in place and is unproven. Over the past couple of years FAIR Canada has experienced resistance from IIROC in engaging in discussions and meetings to discuss regulatory policy issues. While in recent months there is a renewed willingness to engage in discussions between the two organizations, the level of engagement that had previously existed has not been fully restored. **The CSA review should continue to consider the appropriateness of SROs' regulatory policy consultation processes.**

Merger of the SROs

Ermanno Pascutto, Executive Director at FAIR Canada says, ***"Merely merging the two SROs using the current self-regulatory model would not be adequate given the shortcomings of the current SRO system. The important question is would a consolidation be in the best interests of the investing public and in the public interest? We urge the CSA to consider a new self-regulator model and SRO organization."***

"The nature and meaning of the SROs' public interest responsibility, and how the CSA can ensure that it is met, should be carefully considered", says Pascutto.

When the SRO brings a disciplinary proceeding and finds a breach of the rules that resulted in harm to investors it should require as part of the resolution of the proceeding that the dealer compensate the harmed investor.

At present, it does not appear that compensation features in settlements. In fact, whether there was disgorgement of ill gotten gains or compensation of the client may not even be mentioned. Having conducted the investigation, the SRO is well placed to identify and address the need for compensation.

"Today the investor is left with limited access to justice and may never be properly compensated when she or he needs to take on a major financial institution. With an express mandate for an SRO to address compensation, the system can fairly and efficiently resolve many investor complaints, greatly improve access to justice for retail investors and improve confidence in the financial industry and regulators. Let's aspire to a new and improved industry self regulator whose mandate expressly includes seeking compensation for harmed investors", said Ermanno Pascutto. "

FAIR Canada welcomes the CSA review of the self-regulatory organizations framework that governs the regulatory mandates SROs. FAIR Canada looks forward to actively participating in the consultation process.

About FAIR Canada: FAIR Canada is an independent national charitable organization. The mission of FAIR Canada is to be a catalyst for enhancing the rights of Canadian shareholders and individual investors including being a national voice for investors and financial consumers in securities regulation. FAIR Canada provides information and education to the public, governments and regulators about investors' and financial consumers' rights and protections in Canada's capital markets.

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