

February 2020

## FAIR Focus: Is Self Regulation In the Public Interest?

### Op-ed: Is Self-Regulation Working in the Public Interest?

[Investment Executive](#) published a FAIR Canada op-ed about the importance of the CSA review of the regulatory framework for the self-regulatory organizations (SRO), IIROC and the MFDA, that was announced last December. FAIR Canada questions whether self-regulation is working in the interests of the public or in the interests of the financial services industry.

FAIR Canada argues that the current matter of IIROC dealer member client accounts in breach of securities laws constitutes a recent example of the problem and a reason to question the sufficiency of the current self-regulatory model. That issue was revealed on October 10, 2019 when IIROC published notice [19-0177 \(https://www.iiroc.ca/documents/2019/1c2d1140-5f77-4976-91a3-57c9e61f324b\\_en.pdf\)](https://www.iiroc.ca/documents/2019/1c2d1140-5f77-4976-91a3-57c9e61f324b_en.pdf) which disclosed that IIROC had discovered the existence of liability exclusionary or limitation clauses in client account agreements used by IIROC dealers, contrary to IIROC rules and requirements under the Securities Act.

**FAIR Canada recommends that the extent of the defective client agreement problem should be fully disclosed by IIROC, and IIROC dealers should be required to confirm compliance by specific date, determine whether clients abandoned claims or were denied compensation during the offending period based on disclaimers of liability which were contrary to legal requirements and rectify those cases.**



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On February 3, the MFDA [published](https://mfda.ca/wp-content/uploads/MFDA_SpecialReport.pdf) a discussion paper, *A Path Towards Modern SRO*, ([https://mfda.ca/wp-content/uploads/MFDA\\_SpecialReport.pdf](https://mfda.ca/wp-content/uploads/MFDA_SpecialReport.pdf)) proposing a new model for SRO regulation for consideration by the CSA in its review of self-regulation which was announced in December 2019.

**The MFDA paper proposes a new investor centric SRO with an improved governance structure and enhanced CSA oversight.**

## Ontario Capital Markets Modernization Task Force

In its 2019 Fall Economic Statement, the Ontario government committed to reviewing the Securities Act for the first time in over 15 years. Ontario said it would undertake measures to create a modernized securities regulatory framework that is responsive to innovation and changes in the marketplace. The government said it would appoint a task force to undertake the review and report back on measures to foster greater innovation, reduce regulatory burden, ensure a level playing field for small and large businesses and improve investor protection.

On February 6, Rod Phillips, the Ontario Minister of Finance [announced](https://news.ontario.ca/mof/en/2020/2/ontario-appoints-members-of-taskforce-to-review-capital-markets.html) (<https://news.ontario.ca/mof/en/2020/2/ontario-appoints-members-of-taskforce-to-review-capital-markets.html>) the Capital Markets Task Force appointments: Walied Soliman, Task Force Chair (Canadian Chair, Norton Rose Fulbright), Robert Duchesne (former CEO and Director, Aimia), Wesley Hall (Founder and Executive Chair, Kingsdale Advisors), Cindy Tripp (Founding Partner and former Managing Director, GMP Securities LP) and Melissa Kennedy (Executive VP and Chief Legal Officer, Sun Life). The Task Force's very ambitious timeline includes the publication of a consultation paper in the summer 2020 and final report shortly thereafter in the fall.

FAIR Canada welcomes the appointment of the Task Force. Investor interests, including retail investor interests, should be a critical consideration in the creation of a modernized capital markets regulatory framework. Investors are one of the main beneficiaries and stakeholders.

**FAIR Canada encourages the addition of retail investor representation to the Task Force membership to provide a voice for investors. Retail investor representation would also help to bring diversified backgrounds and perspectives to the**

## FAIR Canada in the News

### Modernization Task Force Qualified but Lacking Consumer Representation

Ermanno Pascutto, Executive Director, is **quoted** in the Globe and Mail

(<https://www.theglobeandmail.com/business/article-ontario-launches-task-force-to-modernize-securities-law-review-how-it/>) regarding the Ontario government's announcement of the Capital Markets Modernization Task Force appointments.

Ermanno said that FAIR Canada supports the review, finds the committee highly qualified, with one caveat - the absence of investor and consumer representation: "It's a little disappointing that the people of Ontario, who are overwhelmingly retail investors and consumers of financial products and services, are not represented on the task force.

### "Big shoes to fill" at OSC

Douglas Walker, Deputy Director, is **quoted** in Investment Executive (<https://www.investmentexecutive.com/insight/letters-to-the-editor/is-self-regulation-working-in-the-public-interest/>) regarding Maureen Jensen's resignation and the next OSC Chair. He said the next OSC chief should be "someone who is a champion of protecting investors through securities regulation; who has a deep understanding of the capital markets, securities law and regulation; and knows what it means to act as a public interest regulator. [That's] an enormously challenging role. It requires someone who is truly special."

### What's Next for FAIR Canada? The prognosis for Canada's foremost investor advocacy group does not look good - can self-regulators step in to fill the void?

Douglas Walker was **quoted** by Morningstar (<https://www.morningstar.ca/ca/news/199193/what-next-for-fair-canada.aspx>) in an article published on February 4 that discusses the return by FAIR Canada of \$2.4 in donation funds to the Jarislowsky Foundation on September 30, 2019.

Morningstar notes that some industry members suggest that SROs could fill the void in investor protection. However, others question how effective a role the SROs could play.

Walker is quoted: "The decisions of self-regulatory organizations are controlled by the securities industry firms that they regulate. Their rulemaking advisory committees exclude the participation of

investor advocacy organizations speaking on behalf of the interests of individual investors."

Currently, Morningstar states "there are no directors with investor representation experience at IIROC and at the MFDA." IIROC's board of directors has six representatives from the financial industry, and six "independents."

On February 24, IIROC announced its criteria for "independent" directors would now include direct experience with consumer and retail investor issues.

### **Episode 9: The Future of Wealth Management - Prosper Podcast, from Advisor's Edge; and Moolala: Money Made Simple podcast on SiriusXM**

Fern Karsh, Policy Counsel and Corporate Secretary, was interviewed by Bruce Sellery on SiriusXM on the Moolala: Money Made Simple Podcast (<http://podcasts.moolala.ca/page/4/>) on "the Financial Decade Ahead". She was also interviewed on the Prosper Podcast (<https://www.advisor.ca/feature/prosper-podcasts/>) from Advisor's Edge on "The Future of Wealth Management".

In discussing where technology is going to play, Karsh described robo advisors as a growth space, which she said is "anticipated to grow at a rate of about 30% a year". She said that this "links up well with a lot of catalysts... In terms of demographic shifts, I would see robos continuing to appeal to younger generations, like the digital native millennials and Gen Zs who are comfortable doing everything online." She added, "the robos, they're getting savvier and more mature. ... it's been about five years now so there's actual returns and history to see. There's a way to actually evaluate their model portfolios. I think that would be indicative of further growth [potential] in that sector. ... They are also competitive on fees, and I think that that's an easy sell to the general public."

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