

September 3, 2020

Capital Markets Modernization Taskforce (the “**Taskforce**”)

Dear Sirs and Mesdames:

Re: Consultation – Modernizing Ontario’s Capital Markets

Canadian Investor Protection Fund (“**CIPF**” or “**we**”) is a not-for-profit corporation approved by the Canadian Securities Administrators (the “**CSA**”) as an investor protection fund and funded by its members. CIPF’s members are those investment dealers regulated by the Investment Industry Regulatory Organization of Canada (“**IIROC**”). Our mandate is to provide protection within prescribed limits to eligible clients of member firms suffering losses if client property comprising securities, cash and other property held by a member firm is unavailable as a result of the insolvency of the member firm. CIPF is not a regulator and has no authority to investigate or regulate its member firms. We are subject to oversight by the CSA and maintain a close relationship with IIROC and other compensation funds both within Canada and internationally.

We have reviewed, with great interest, the Consultation Report issued by the Taskforce in July 2020 as part of its work in reviewing and making recommendations to modernize the Ontario capital markets regulatory framework. We support the mandate of the Taskforce and concur with many of the key objectives identified in the Consultation Report and, in particular, that of enhancing investor protection. As a key participant in the Ontario capital markets with a mandate to provide specific protection to clients of IIROC dealer members, we have a fundamental interest in all initiatives designed to safeguard the interests of investors and appreciate the opportunity to provide comments on elements of the Consultation Report of relevance to CIPF.

The Taskforce has proposed that a single self-regulatory organization (“**SRO**”) structure be established in a two-phased approach covering all registered firms distributing products and providing advice to investors in Ontario. The proposal is intended to reduce regulatory fragmentation and arbitrage and otherwise streamline and simplify regulatory oversight. CIPF agrees that consistent, uniform and transparent regulation and regulatory oversight is of great benefit to investors and serves to safeguard their interests. These principles underscore the value of affording all investors equivalent protection. At this time, clients of dealers regulated by IIROC and the MFDA have the benefit of the protection afforded by CIPF (in the case of IIROC dealer members) and the MFDA Investor Protection Corporation (in the case of MFDA dealer members). Clients of exempt market dealers, portfolio managers and scholarship plan dealers are currently not afforded such protection. CIPF strongly urges the Taskforce to consider including in its final report to the Minister of Finance a recommendation that membership in a compensation fund be a requirement for all registered firms distributing products and providing advice to investors in Ontario on a basis commensurate with each firm’s size and risk profile. This will contribute to the



harmonization of capital markets regulation in Ontario, promote a level playing field among the participants in those markets and improve the protection currently afforded certain classes of investors in the Province. The recommendation would further the stated intention of the Taskforce to “promote growth and competition in Ontario’s capital markets while upholding investor protection”.

While CIPF is not a regulator, we are subject to the oversight of the CSA and maintain a close relationship with IIROC. Accordingly, we have (and continue to) adhere to stringent principles of governance befitting regulatory bodies. In this context, we paid some attention to those elements of the Consultation Report addressing SRO governance matters.

We strongly support recommendations designed to foster board diversity and board independence (including prescribing independence criteria and mandating both director term limits¹ and governance policies requiring diversity to be considered in the nomination of directors). It must, however, be recognized that the regulation and oversight of capital markets and their participants involves exceedingly complex considerations in a rapidly evolving environment. The importance of expertise and familiarity with capital market operations and practices cannot be understated. The Taskforce has proposed that the number of independent directors of an SRO should be higher than the number of industry directors and the chair of an SRO board should always be independent. CIPF does not consider these proposals to strike the appropriate balance between independence and experience and, instead, encourages the Taskforce to consider the approach currently reflected in CIPF’s governance. CIPF’s board consists of an equal number of independent and industry directors together with the Chair and the President and Chief Executive Officer of CIPF. The chair of the board is appointed by the board for a two year term and is selected from among the independent and industry directors and, as a matter of practice, effort is made to ensure that both groups are equally represented in the position over time. In this way, the benefits of independence and expertise are attained. The appointment of independent chairs of relevant board committees (such as the Audit, Finance & Investment Committee and the Coverage Committee) ensures that matters requiring independent oversight are so overseen.

The Taskforce also proposes to give the Ontario Securities Commission (the “OSC”) greater tools to oversee the SROs both to ensure the SROs are fulfilling their public interest mandate in a manner that is not overly burdensome and to afford the OSC the ability to foster fair and efficient capital markets. Among the tools proposed in the Consultation Report are a veto over the appointment of the chair and chief executive officer of an SRO and a right on the part of the CSA to appoint up to half of the directors of the SRO. We do not view such tools as being necessary for effective oversight of an SRO. A robust oversight process that involves sharing of information, guidance, reporting and assessment can well achieve the objectives identified in the Consultation Report. Involvement of independent directors of the SRO in reporting and assessment processes will also serve to reinforce the OSC’s oversight. Conversely, the appointment of directors and control over the appointment of key management of an SRO will not, itself, enhance the OSC’s oversight of the SRO

¹ While CIPF is not, in principle, opposed to the recommendation of the Taskforce that term limits be imposed upon the chief executive officer of an SRO, we note that the implementation of any such recommendation will need to have regard for employment practices and regulations.

(especially in light of the fiduciary duties of directors and officers). Moreover, such involvement of the OSC or CSA in the appointment of management and the board of an SRO belies the status of the SRO as a non-governmental entity. The SROs in Ontario are neither Crown corporations, nor agencies or departments of the government. In our view, the appointment of the chief executive officer and nomination of directors of an SRO is best entrusted to the nominating committee and board of the SRO.

Again, we appreciate the opportunity to respond to your request for comment and trust that you find our feedback relevant. Please do not hesitate to contact our President and Chief Executive Officer, Rozanne Reszel at rreszel@cipf.ca if you would like to discuss our comments in greater detail.

Yours very truly,

CANADIAN INVESTOR PROTECTION FUND



Rozanne Reszel

President & Chief Executive Officer

On behalf of the Board of Directors of the Canadian Investor Protection Fund

c.c. Debra Hewson, Canadian Investor Protection Fund Board Chair