

## Appendix B

### IN THE MATTER OF THE SECURITIES ACT, SNB 2004, CHAPTER S-5.5, AS AMENDED (the “Act”)

### AND IN THE MATTER OF [NEW SRO]

### RECOGNITION ORDER (Subsection 35(1)(b) of the Act)

**WHEREAS** the Commission issued an order dated 1 June 2008, as amended on 28 May 2010, 21 March 2018 and 2 March 2021, recognizing the Investment Industry Regulatory Organization of Canada (“**IIROC**”) as a self-regulatory organization under section 35(1)(b) of the Act.

**AND WHEREAS** the Commission issued an order dated 23 July 2007, as amended on 25 March 2008, 17 November 2008, 5 November 2014, 21 March 2018, and 2 March 2021 recognizing the Mutual Fund Dealers Association of Canada (the “**MFDA**”) as a self-regulatory organization under subsection 35(1)(b) of the Act.

**AND WHEREAS** following public consultations, the Canadian Securities Administrators (“**CSA**”) published CSA Position Paper 25-404 – *New Self-Regulatory Organization Framework*, recommending amalgamation of IIROC and the MFDA into a single self-regulatory organization in order to provide a framework for efficient and effective regulation in the public interest, including an enhanced governance structure, improved investor protection and education, and strengthened industry proficiency.

**AND WHEREAS** [New SRO] will, among other things, regulate mutual fund dealers, investment dealers and the trading on Marketplace Members, as defined in Appendix A to this order (“**Recognition Order**”); and perform the functions identified in section 15 *Performance of [New SRO] functions* of Appendix A to this Recognition Order.

**AND WHEREAS** [New SRO] will act as a regulation services provider in accordance with National Instrument 21-101 *Marketplace Operation* and National Instrument 23-101 *Trading Rules*.

**AND WHEREAS** [New SRO] has committed to a strong corporate governance structure with a majority of independent directors on [New SRO]’s board of directors and its committees.

**AND WHEREAS** [New SRO] has committed to establish formal investor advocacy mechanisms to ensure proper investor input in policy development and rulemaking.

**AND WHEREAS** [New SRO] has adopted interim rules which include (i) the Investment Dealer and Partially Consolidated Rules, (ii) the Universal and Market Integrity Rules and (iii) the Mutual Fund Dealer Rules, which are largely based on the rules of IIROC and the rules and certain by-laws and policies of the MFDA that were in force immediately prior to amalgamation. [New SRO] has adopted, as applicable, policies, regulations, forms, notices, regulatory notices, bulletins, directives, guidance and fee models of IIROC and the MFDA that were in force immediately prior to amalgamation.

**AND WHEREAS** IIROC and the MFDA have applied to the Commission for recognition of [New SRO] as a self-regulatory organization under subsection 35(1)(b) of the Act (“**Application**”) to operate as a successor to IIROC and the MFDA following their amalgamation under the *Canada Not-for profit Corporations Act*.

**AND WHEREAS** [New SRO] has also applied to the Alberta Securities Commission; Autorité des marchés financiers; British Columbia Securities Commission; Manitoba Securities Commission; Office of the Superintendent of Securities, Digital Government and Services, Newfoundland and Labrador; Office of the Superintendent of Securities, Northwest Territories; Nova Scotia Securities Commission; Office of the Superintendent of Securities, Nunavut; Ontario Securities Commission; Prince Edward Island Office of the Superintendent of Securities; Financial and Consumer Affairs Authority of Saskatchewan; and Office of the Yukon Superintendent of Securities (together with the Commission, the **Recognizing Regulators**).

**AND WHEREAS** the Recognizing Regulators have entered into a Memorandum of Understanding regarding oversight of [New SRO] (“**MOU**”) effective [●], as amended from time to time.

**AND WHEREAS** IIROC and the MFDA are consolidating through amalgamation to continue as [New SRO], references to IIROC and the MFDA in the existing regulations, rules, orders, policies, notices or other instruments (“**Provisions**”) in the jurisdictions of the Recognizing Regulators will be treated and interpreted as references to [New SRO] until the appropriate consequential amendments are implemented, if considered necessary. Whenever a Provision assigns requirements or privileges exclusively to either investment dealers or mutual fund dealers, who, prior to the amalgamation, were members of IIROC and the MFDA respectively, it is to be understood that such requirements and privileges shall apply exclusively to either investment dealers or mutual fund dealers of the [New SRO], as applicable.

**AND WHEREAS** based on the Application and the representations made by IIROC and the MFDA, the Commission is satisfied that recognizing [New SRO] as a self-regulatory organization is in the public interest.

**AND WHEREAS** the Commission may, if it is satisfied that to do so would be in the public interest, make any decision with respect to any by-law, rule, regulation, policy, procedure, interpretation or practice of a [New SRO].

**AND WHEREAS** the Commission may, if it is satisfied that to do so would not be prejudicial to the public interest, make an order revoking or varying this Recognition Order or any orders for IIROC and the MFDA.

**IT IS ORDERED**, under subsection 35(1)(b) of the Act, that [New SRO] is recognized as a self-regulatory organization, subject to the terms and conditions set out in Appendix A to this Recognition Order and the applicable provisions of the MOU.

Dated this [●], effective [●].

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Véronique Long  
Secretary

# APPENDIX A

## TERMS AND CONDITIONS

### Definitions

#### 1. General

Unless otherwise defined or interpreted in this Recognition Order, every term used in this Recognition Order that is defined in subsection 1.1(3) of National Instrument 14-101 – *Definitions* has the meaning ascribed to it in that subsection.

“**Affiliated Entity**” has the meaning ascribed to it in subsection 1.3(1) of National Instrument 52-110 *Audit Committees*.

“**Approved Person**” has the meaning ascribed to that term in [New SRO]’s Rules.

“**Associate**”, where used to indicate a relationship with any person, means:

- (a) any company of which such person beneficially owns, directly or indirectly, voting securities carrying more than ten percent (10%) of the voting rights attached to all voting securities of the company for the time being outstanding;
- (b) a partner of that person;
- (c) any trust or estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar capacity;
- (d) any relative of that person who resides in the same home as that person;
- (e) any person who resides in the same home as the person and to whom that person is married or with whom that person is living in a conjugal relationship outside of marriage; or
- (f) any relative of a person mentioned in clause (e) above, who has the same home as that person.

“**Board**” means the Board of Directors of the Corporation.

“**Corporation**” means [New SRO] and either of its predecessors and any Affiliated Entity.

“**Dealer Member**” means a Member of the Corporation that is registered as an investment dealer or a mutual fund dealer in accordance with securities legislation.

“**Director**” means a member of the Board.

“**District**” has the meaning ascribed to it in the [New SRO] by-laws.

**“Enforcement proceeding”** means any proceeding commenced by [New SRO] for the purposes of enforcement, including but not limited to a disciplinary hearing and settlement hearing.

**“Executive Officer”** has the meaning ascribed to it in section 1.1 of National Instrument 52-110 *Audit Committees*.

**“Immediate Family Member”** has the meaning ascribed to it in section 1.1 of National Instrument 52-110 *Audit Committees*.

**“Marketplace”** means:

- (a) a recognized exchange or a commodity futures exchange registered in a jurisdiction of Canada;
- (b) a recognized quotation and trade reporting system; or
- (c) a person or company not included in clause (a) or (b) above that facilitates the trading of securities or derivatives in a jurisdiction of Canada; and
  - (i) constitutes, maintains or provides a market or facility for bringing together buyers and sellers of securities or derivatives;
  - (ii) brings together the orders for securities or derivatives of multiple buyers and sellers; and
  - (iii) uses established non-discretionary methods under which the orders interact with each other, and the buyers and sellers entering the orders agree to the terms of a trade.

**“Marketplace Member”** means a Member that is a Marketplace.

**“Member”** means a member of the Corporation and includes Dealer Members and Marketplace Members.

**“Monetary sanctions”** means any fines or other monetary amounts, including disgorgement, ordered in or arising from an Enforcement Proceeding or any other measure taken by [New SRO]. Monetary sanctions do not include costs ordered in Enforcement Proceedings.

**“Region”** has the meaning ascribed to it in the [New SRO] by-laws.

**“Regional Council”** has a meaning ascribed to it in the [New SRO] by-laws.

**“Recognizing Regulators”** means the Alberta Securities Commission; Autorité des marchés financiers; British Columbia Securities Commission; Manitoba Securities Commission; Financial and Consumer Services Commission of New Brunswick; Office of the Superintendent of Securities, Digital Government and Services, Newfoundland and Labrador; Office of the Superintendent of Securities, Northwest Territories; Nova Scotia Securities Commission; Office of the Superintendent of Securities, Nunavut; Ontario Securities Commission; Prince Edward Island Office of the Superintendent of Securities; Financial and

Consumer Affairs Authority of Saskatchewan; and Office of the Yukon Superintendent of Securities.

“**Rule**” means any rule, policy, form, fee model or other similar instrument of [New SRO].

“**[New SRO] MOU**” means Memorandum of Understanding regarding oversight of [New SRO].

### **Definition of Independent Director**

- 2. (1) “Independent Director”** means a Director who has no direct or indirect material relationship with the Corporation or a Member.
- (2)** For the purposes of subsection (1), a “material relationship” is a relationship which could be reasonably expected to interfere with the exercise of a Director’s independent judgment.
- (3)** Despite subsection (1), the following individuals are considered to have a material relationship with the Corporation or a Member:
- (a) an individual who is, or has been within the last three years, an employee or Executive Officer of the Corporation;
  - (b) an individual whose Immediate Family Member is, or has been within the last three years, an Executive Officer or non-independent director of the Corporation;
  - (c) an individual who, or whose Immediate Family Member, is or has been within the last three years, an Executive Officer of an entity if any of the Corporation’s current Executive Officers serves or served at that same time on the entity’s compensation committee;
  - (d) an individual who received, or whose Immediate Family Member who is employed as an Executive Officer of the Corporation received, more than \$75,000 in direct compensation from the Corporation during any 12-month period within the last three years;
  - (e) an individual who is, or has been within the last three years, a partner, director, officer, employee, or person acting in a similar capacity of:
    - (i) a Member,
    - (ii) an Associate of a Member, or
    - (iii) an Affiliated Entity of a Member; and

- (f) an individual who is, or has been within the last three years, an Associate of a partner, director, officer, employee, or person acting in a similar capacity of a Member.
- (4)** For the purposes of paragraph (3)(d), direct compensation does not include:
- (a) remuneration for acting as a member of the Board or of any Board committee of the Corporation; and
  - (b) the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the Corporation if the compensation is not contingent in any way on continued service.
- (5)** Despite subsection (3), an individual will ordinarily not be considered to have a material relationship with the Corporation solely because the individual or his or her Immediate Family Member
- (a) has previously acted as an interim Chief Executive Officer (**CEO**) of the Corporation; or
  - (b) acts, or has previously acted, as a chair or vice-chair of the Board or of any Board committee of the Corporation on a part-time basis.
- (6)** If, despite the three-year cooling-off period described in paragraphs 3(e) and (f), the nature or duration of an individual's relationship with a Member, its Associates, or its Affiliated Entities could be reasonably expected to interfere with the exercise of that individual's independent judgment, then a sufficiently longer cooling-off period from the Member, Associate, and Affiliated Entity is required for that individual to be considered an Independent Director.
- (7)** Despite any determination made under subsections (2) to (6), an individual is considered to have a material relationship with the Corporation if the individual
- (a) accepts, directly or indirectly, any consulting, advisory or other compensatory fee from the Corporation or any subsidiary entity of the Corporation, other than as remuneration for acting in his or her capacity as a member of the Board or any Board committee, or as a part-time chair or vice-chair of the Board or any Board committee; or
  - (b) is an Affiliated Entity of the Corporation or any of its subsidiary entities.
- (8)** For the purposes of subsection (7), the indirect acceptance by an individual of any consulting, advisory or other compensatory fee includes acceptance of a fee by
- (a) an individual's spouse, minor child or stepchild, or a child or stepchild who shares the individual's home; or

- (b) an entity in which such individual is a partner, member, an officer such as a managing director occupying a comparable position or Executive Officer, or occupies a similar position (except limited partners, non-managing members and those occupying similar positions who, in each case, have no active role in providing services to the entity) and which provides accounting, consulting, legal, investment banking or financial advisory services to the Corporation or any subsidiary entity of the Corporation.
- (9) For the purposes of subsection (7), compensatory fees do not include the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the Corporation if the compensation is not contingent in any way on continued service.

### **Recognition criteria**

- 3. [New SRO] must continue to comply with the criteria attached at Schedule 1.

### **Public interest**

- 4. (1) [New SRO] must act in the public interest. In ensuring it meets the public interest mandate, the [New SRO] must:
  - (a) articulate in its constating documents and inform its stakeholders, and the public in general, of its public interest mandate;
  - (b) take reasonable steps to ensure that appropriate training is provided to its Directors, Board committee members, senior management, and staff in interpreting the [New SRO's] public interest mandate; and
  - (c) ensure that the compensation structure of its Executive Officers and senior management is appropriately linked to the effective delivery of the [New SRO's] public interest mandate.

### **Approval of changes**

- 5. (1) Prior Commission approval is required for any changes to the following:
  - (a) the corporate governance structure of [New SRO];
  - (b) [New SRO]'s articles of amalgamation;
  - (c) the charter of the Board and each of its committees; and

(d) the assignment, transfer, delegation or sub-contracting of the performance of all or a substantial part of its regulatory functions or responsibilities as a self-regulatory organization.

**(2)** Prior Commission approval is required for material changes to the following:

(a) the fee model;

(b) the functions [New SRO] performs;

(c) [New SRO]'s organizational structure, including the location of New SRO offices or regulatory staff;

(d) the activities, responsibilities, and authority of the Regional Councils;

(e) Regions and Districts of the Corporation; and

(f) any regulation services agreement entered into by the [New SRO].

### **Non-objection to changes**

**6. (1)** Prior Commission non-objection, as described in the Appendix A of the [New SRO] MOU, is required for the following:

(a) nomination of each candidate for an Independent Director position;

(b) appointment of the CEO;

(c) changes to Board skills matrices;

(d) changes to the CEO skills sub-matrix; and

(e) approval of a Board exemption, or an amendment or extension to a Board exemption, from a Rule that could have a significant impact on:

(i) Members and others subject to [New SRO]'s jurisdiction, or

(ii) the capital markets generally, including, for greater clarity, particular stakeholders or sectors.

### **Commission oversight**

**7. (1)** [New SRO] must seek input from the Commission before finalizing its strategic and business plans, annual statements of priorities and budgets.

- (2) [New SRO] must cooperate and assist with any reviews of its functions by the Commission or an independent third-party that is acting at the direction of the Commission.
- (3) The scope of the independent third-party review, referred to in subsection (2), and the person or the persons that will undertake the review will be determined by the Commission. Such review will be at the [New SRO]'s expense, including [New SRO] reimbursing the Commission for any fees, when required.

## **Status**

8. (1) [New SRO] must operate on a not-for-profit basis.
- (2) [New SRO] must comply with any terms and conditions the Commission may impose in the public interest concerning any transaction that would result in [New SRO]:
- (a) ceasing to perform its functions;
  - (b) discontinuing, suspending or winding-up all or a significant portion of its operations;
  - (c) disposing of all or substantially all of its assets; or
  - (d) terminating its agreement with an information technology service provider providing critical technology systems.

## **Rules and rule-making**

9. [New SRO] must act in accordance with the process for introducing new or amending, revoking or suspending existing by-laws and Rules outlined in Appendix C of the [New SRO] MOU, as amended from time to time. For any proposal to be published for public comment, [New SRO] must consider and clearly articulate why the proposal is in the public interest.

## **Governance**

### **10. (1) The Board**

[New SRO] must ensure that:

- (a) it maintains a Board size of not more than 15 Directors;
- (b) the roles of CEO and chair of the Board are occupied by separate persons;

- (c) a majority of the Board, including the chair, are Independent Directors;
- (d) it maintains appropriate term limits for the Board; and
- (e) it develops, maintains and complies with diversity and inclusion policies.

## **(2) Board committees**

[New SRO] must ensure that:

- (a) the governance committee of the Board is composed entirely of Independent Directors;
- (b) other Board committees are composed of a majority of Independent Directors; and
- (c) chairs of all Board committees are Independent Directors.

## **(3) Regional Councils**

[New SRO] will establish Regional Councils according to its by-laws. The Regional Councils will serve an advisory role to [New SRO] to provide regional perspective on national or any other issues. The [New SRO] will allocate sufficient resources to the Regional Councils to ensure they can meaningfully fulfil their responsibilities. The Regional Councils will report to the Board at least annually.

## **Fees**

11. [New SRO] must develop an integrated fee model to be approved by the Commission. Until such time, [New SRO] must seek authorization from the Commission for any increase in fees for Dealer Members that are not registered as both investment and mutual fund dealers where such increase is related to the costs of creation of [New SRO].

## **Investor engagement and protection**

12. (1) [New SRO] must create mechanisms to educate and formally engage with investors, including for the purpose of obtaining input on the design and implementation of applicable Rule proposals. In particular, the [New SRO] must:
- (a) establish an investor advisory panel to provide independent research or input on regulatory and public interest matters. The Board must meet with

the investor advisory panel at least annually in addition to [New SRO] executives meeting with the investor advisory panel;

- (b) establish a separate investor office within the [New SRO] to support Rule development and provide investor education or outreach. The investor office must be prominently positioned, easily identifiable and accessible to investors;
- (c) ensure that appropriate [New SRO] advisory committees include a reasonable proportion of investor representatives; and
- (d) maintain a whistleblower program.

### **Due process**

**13.** Subject to applicable laws and the Rules and by-laws of [New SRO], before rendering a decision that affects the rights of a person or company in relation to membership, registration, or enforcement matters, [New SRO] must provide that person or company an opportunity to be heard.

### **Record keeping**

- 14. (1)** [New SRO] must keep records of all matters subject to regulatory approvals by [New SRO] under the Rules and [New SRO] by-laws for an appropriate time period in accordance with legal and industry standards for record retention, including but not limited to:
- (a) all granted membership requests, specifying the persons to whom membership was granted and the basis for its decision; and
  - (b) all denied membership requests or terms and conditions imposed on membership, specifying the basis for its decision.

### **Performance of [New SRO] functions**

- 15. (1)** [New SRO] must set Rules governing its Dealer Members and others subject to its jurisdiction, and [New SRO] must set Rules governing trading on Marketplace Members by Dealer Members and others subject to its jurisdiction.
- (2)** [New SRO] must administer and monitor compliance with both the applicable Rules and Canadian securities legislation by Members and others subject to its jurisdiction and enforce compliance with the Rules by Dealer Members, including alternative trading systems, and others subject to its jurisdiction.

- (3) In its capacity as a regulation services provider, [New SRO] must administer, monitor and/or enforce rules pursuant to a regulation services agreement.
- (4) [New SRO], through its Directors, officers and employees, must be responsible for all membership matters while giving consideration to any regional issues raised by the Regional Councils on an advisory basis.
- (5) Subject to applicable legislation, [New SRO] must:

  - (a) collect, use and disclose personal information only to the extent reasonably necessary to carry out its regulatory activities and mandate; and
  - (b) protect personal information and confidential business information in its custody or under its control.
- (6) [New SRO] must adopt policies and procedures designed to ensure that confidential information, including personal information, related to its operations or those of any Dealer Member, Marketplace Member or marketplace participant, is maintained in confidence and not shared inappropriately with other persons, and must use all reasonable efforts to comply with these policies and procedures.
- (7) [New SRO] must ensure that it is accessible for contact by the public for purposes relating to the performance of its functions as a self-regulatory organization.
- (8) [New SRO] must develop and make available to the public processes for handling complaints against the [New SRO], including appropriate escalation procedures.
- (9) [New SRO] must publish concurrently in English and French each document issued to the public or generally to any class of Members.
- (10) [New SRO] must, at least annually, self-assess the performance of its functions, and report thereon to its Board, together with any recommendations for improvements.
- (11) [New SRO] must provide to the Commission any data, information or records concerning Marketplace activity in order, among other things, to facilitate the efficient identification and analysis of market misconduct and improvement of the insight into Canadian capital markets and market structures.

## **Use of Monetary Sanctions**

16. (1) All Monetary Sanctions collected by [New SRO] may only be used, directly or indirectly, in the public interest as follows:

(a) as approved by the governance committee,

- (i) for the development of systems or other related expenditures that are necessary to address emerging regulatory issues and are directly related to protecting investors or the integrity of the capital markets, provided that any such use does not constitute normal course operating expenses,
- (ii) for education or research projects that are directly relevant to the investment industry, and which benefit the public or the capital markets,
- (iii) for specific funding related to a whistleblower program, provided that any such use does not constitute normal course operating expenses,
- (iv) to contribute to a non-profit, tax-exempt organization, the purposes of which include protection of investors, or those described in paragraph (a)(ii), or
- (v) for such other purposes as may be subsequently approved by the Commission;

or

(b) for reasonable costs associated with the administration of [New SRO]'s investor office, investor advisory panel and [New SRO]'s hearings.

**(2)** The process to allocate such Monetary Sanctions must be fair and transparent.

### **Public Notice of Enforcement Proceedings**

**17. (1)** Subject to subsection (2) and applicable laws, [New SRO] must

(a) promptly notify the public and the news media of:

- (i) the specifics relating to each Enforcement Proceeding commenced by [New SRO], and
- (ii) the disposition of each Enforcement Proceeding, including reasons; and

(b) ensure that Enforcement Proceedings are open to the public and the news media.

- (2)** Despite subsection (1), [New SRO] may, on its own initiative or on request of a party to the Enforcement Proceeding, or as permitted by its Rules, conduct a closed-door hearing or prohibit the publication or release of information or documents if it determines that it is required for the protection of confidential matters. [New SRO] must establish written criteria for making a determination of confidentiality.

## **Capacity and integrity of systems**

### **18. (1)** [New SRO] must

(a) ensure that each of [New SRO]'s critical technology systems has

- (i) appropriate internal controls to ensure integrity and security of information and data, and
- (ii) reasonable and sufficient capacity, and backup to enable [New SRO] to properly carry on its business;

(b) have controls to manage the risks associated with its operations, including an annual review of its contingency and business continuity plan.

- (2)** [New SRO] must, on a reasonably frequent basis, and in any event at least annually, cause to be performed an independent review of the controls and capacity described in subsection (1) above in accordance with established audit procedures and standards. The Board must conduct a review of the report containing the recommendations and conclusions of the independent review. [New SRO] must also, on a reasonably frequent basis, and in any event at least annually, complete the following, which may be completed as part of the independent review:

- (a) make reasonable current and future capacity estimates for its critical technology systems;
- (b) conduct capacity stress tests to determine the processing capability of those systems to perform its functions in an accurate, timely and efficient manner;
- (c) review and keep current the development and testing methodology of those systems; and
- (d) review the vulnerability of those systems to internal and external threats including, but not limited to, cyber attacks, physical hazards or natural disasters.

**(3)** The term and condition in subsection (2) above will not apply if:

- (a) the information technology provider retained by [New SRO] is required, either by law or otherwise, to conduct an annual independent review; and
- (b) [New SRO]'s Board obtains and reviews annually a copy of the independent review report of its information technology provider to ensure that it has controls in place to address the matters outlined in paragraphs (1) and (2) above.

**(4)** [New SRO] must, periodically or at the request of the Commission, benchmark surveillance systems and services provided by its information technology providers against comparable systems and services available from other third-party technology providers.

### **Capacity and integrity of continuing education tracking system**

**19. (1)** The [New SRO] must ensure that its continuing education tracking system, has

- (a) appropriate internal controls to ensure integrity and security of information; and
- (b) has reasonable and sufficient capacity, and backup to enable the [New SRO] to properly carry on its business.

**(2)** The [New SRO] must on a reasonably frequent basis, and at least biennially, cause a report to be prepared in accordance with established audit standards by a qualified party which provides details of a review designed to ensure that the continuing education tracking system has an adequate system of internal controls, including, but not limited to, integration into the [New SRO] business continuity and disaster recovery plans.

**(3)** Before finalizing any engagement to prepare the report described in (2), the [New SRO] must discuss the choice of qualified party and scope of the review with the Commission.

### **Ongoing reporting requirements**

**20. (1)** [New SRO] must comply with the requirements set out in Schedule 2 of this Recognition Order, as amended from time to time by the Commission.

**(2)** [New SRO] must provide the Commission with other reports, documents and information and data in a format and manner acceptable to the Commission as the Commission or its staff may request.

## **Requirements for New Brunswick**

- 21. (1)** In New Brunswick, [New SRO] shall offer all necessary services in equal quality in both French and English to members of any class and to investors.
- (2)** At the request of the Commission, [New SRO] will communicate to it any report, document or information in French or English.

# **SCHEDULE 1**

## **CRITERIA FOR RECOGNITION**

### **Public interest guiding principles**

1. **(1)** The [New SRO] must act in the public interest by, without limitation:
  - (a) protecting investors from unfair, improper, or fraudulent practices by its Members;
  - (b) fostering fair and efficient capital markets and promoting market integrity;
  - (c) fostering public confidence in capital markets;
  - (d) facilitating investor education;
  - (e) administering a fair, consistent and proportionate continuing education program for all Dealer Members and applicable Approved Persons;
  - (f) accommodating innovation and ensuring flexibility and responsiveness to the future needs of the evolving capital markets, without compromising investor protection;
  - (g) providing effective market surveillance;
  - (h) fostering efficient and effective cooperation and coordination with the Recognizing Regulators to ensure regulatory alignment;
  - (i) facilitating access to advice and products for investors of different demographics;
  - (j) recognizing and incorporating regional considerations and interests from across Canada;
  - (k) facilitating meaningful consultation and input from all types of Members and ensuring that investor perspectives are factored into the development and implementation of regulatory policies;
  - (l) administering robust compliance, enforcement and complaint handling and resolution processes;
  - (m) contributing to financial stability, under the direction of the Recognizing Regulators; and

- (n) administering effective governance and accountability to all stakeholders and preventing regulatory capture.

## **Governance**

- 2. (1) The governance structure and arrangements must be transparent and ensure:
  - (a) effective oversight of the [New SRO];
  - (b) fair, meaningful and diverse representation on the Board and any committees of the Board;
  - (c) a proper balance among the interests of the different persons, business models and companies subject to regulation by [New SRO];
  - (d) a reasonable proportion of the [New SRO] Directors that have relevant experience regarding investor protection issues;
  - (e) a balanced Board in terms of its geographic representation;
  - (f) appropriate locations of the Executive Officers;
  - (g) each Director or Executive Officer is a fit and proper person; and
  - (h) that there are appropriate provisions related to, remuneration, conflicts of interest, limitation of liability, indemnification and qualifications for Directors, officers and employees of the [New SRO].

## **Conflicts of interest**

- 3. Subject to applicable legislation, [New SRO] must identify and avoid real, potential or perceived conflicts of interest between its own interests, or the interests of its Directors, officers, or employees and the public interest.

## **Fees**

- 4. (1) All fees imposed by [New SRO] must be equitably allocated and be proportionate to Members' activities. Fees must not have the effect of creating unreasonable barriers to access.
- (2) The process for setting fees must be fair and transparent.
- (3) [New SRO] must operate on a cost-recovery basis.

## **Compensation or contingency trust fund**

5. [New SRO] must comply with any agreement signed with the [New IPF].

## **Access**

6. (1) [New SRO] must have reasonable written criteria that permit all persons or companies that satisfy the criteria to access [New SRO]'s regulatory services.
- (2) The access criteria and the process for obtaining access must be fair and transparent.

## **Financial viability**

7. [New SRO] must have sufficient financial resources for the proper performance of its functions and to meet its responsibilities.

## **Capacity to perform [New SRO] functions**

8. (1) [New SRO] must maintain its capacity to effectively and efficiently perform its functions, which include governing the conduct of persons or companies subject to its regulation and monitoring and enforcing applicable requirements.
- (2) [New SRO] must maintain in each jurisdiction where it has an office
  - (a) sufficient financial, technological, human and other resources; and
  - (b) appropriate organizational structures

to efficiently, equitably and effectively perform its functions and responsibilities in a timely manner.

- (3) In the course of performing its functions, the [New SRO] must take into consideration the views and processes of the Commission.

## **Capacity and integrity of systems**

9. [New SRO] must develop, implement and maintain adequate controls to ensure capacity, integrity requirements and security of its technology systems.

## **Rules**

- 10.(1) [New SRO] must establish and maintain Rules that:

- (a) are necessary or appropriate to govern and regulate all aspects of its functions and responsibilities as a self-regulatory organization;
- (b) are designed to
  - (i) ensure compliance with applicable securities legislation,
  - (ii) prevent fraudulent and manipulative acts and practices,
  - (iii) promote just and equitable principles of trade and the duty of Dealer Members to act fairly, honestly and in good faith with their clients,
  - (iv) ensure adequate proficiency and continuing education of Approved Persons,
  - (v) foster cooperation and coordination with entities engaged in regulating, clearing, settling, processing information or data with respect to, and facilitating transactions in, securities and derivatives,
  - (vi) foster fair, equitable and ethical business standards and practices,
  - (vii) promote access to advice in different geographic zones, including the servicing of clients in both urban and rural settings,
  - (viii) allow Members to develop and make use of technological advancements to achieve greater efficiencies and productivity, while mitigating any risks to the investors and the public,
  - (ix) promote the protection of investors,
  - (x) be scalable and proportionate to different types and sizes of Dealer Member firms and their respective business models,
  - (xi) contributing to financial stability, under the direction of the Recognizing Regulators, and
  - (xii) provide for appropriate discipline of those whose conduct it regulates;

- (c) do not impose any burden or constraint on competition or innovation that is not necessary or appropriate;
- (d) do not impose costs or restrictions on the activities of market participants that are disproportionate or contrary to the public interest; and
- (e) promote the public interest.

### **Disciplinary matters**

**11. (1)** [New SRO] must develop, make available to the public and follow fair and transparent processes for:

- (a) handling disciplinary matters, including assessments of adequacy of firm supervision of Approved Persons;
- (b) conducting disciplinary hearings; and
- (c) imposing sanctions.

### **Information sharing and regulatory cooperation**

**12. (1)** To assist the Commission and other Recognizing Regulators in carrying out their regulatory mandates, [New SRO] must proactively and transparently share information or data and cooperate with the Commission and other Recognizing Regulators.

**(2)** To assist other regulatory authorities in carrying out their regulatory mandates, [New SRO] must proactively and transparently share information or data and cooperate with, whether domestic or foreign:

- (a) exchanges;
- (b) self-regulatory organizations;
- (c) clearing agencies;
- (d) financial intelligence or law enforcement agencies or authorities;
- (e) banking and financial services authorities; and
- (f) investor protection or compensation funds.

**(3)** Cooperation contemplated under paragraphs (1) and (2) includes the collection and sharing of information or data and other forms of assistance for the purpose of registration, market surveillance, investigations, enforcement litigation, investor protection and compensation and for any other regulatory purpose and is subject to applicable laws related to information sharing and protection of personal information.

### **Other criteria – Québec**

**13.** The constituting documents, by-laws and Rules of [New SRO] must allow that the power to make decisions relating to the supervision of its activities in Québec will be exercised mainly by persons residing in Québec.

## **SCHEDULE 2**

### **REPORTING REQUIREMENTS**

#### **Prior notification**

1. **(1)** [New SRO] will provide the Commission with at least 12 months' written notice prior to completing any transaction that would result in [New SRO]:

- (a) ceasing to perform its functions;
- (b) discontinuing, suspending or winding-up all or a significant portion of its operations; or
- (c) disposing of all or substantially all of its assets.

**(2)** [New SRO] will provide the Commission with at least three months' written notice prior to:

- (a) terminating its agreement with an information technology service provider providing critical technology systems; or
- (b) any intended material change to its agreement with an information technology service provider regarding its critical technology systems.

#### **Immediate notification**

2. **(1)** [New SRO] will immediately notify the Commission of the following events:

- (a) the admission of a new Dealer Member, including the Dealer Member's name, and any terms and conditions that are imposed on the Dealer Member;
- (b) Dealer Members whose rights and privileges or membership will be suspended, terminated or made subject to terms and conditions, including:
  - (i) the Dealer Member's name,
  - (ii) the reasons for the proposed suspension, termination or terms and conditions, and
  - (iii) a description of the steps being taken to ensure that the Dealer Member's clients are being dealt with appropriately, when applicable.
- (c) receipt of a Dealer Member's intention to resign; and

(d) receipt of an application for a Board exemption, or an amendment or extension to a Board exemption, from a Rule that could have a significant impact on:

- (i) [New SRO] Members and others subject to [New SRO]'s jurisdiction, or
- (ii) the capital markets generally including, for greater clarity, particular stakeholders or sectors.

(2) The notice required in subsection (1), other than in (b) and (d), may be provided by [New SRO] issuing a public notice containing the information, provided that such public notice will be issued immediately after the decision is made for admission and immediately after receipt of a notice of intention to resign, as the case may be.

### **Prompt notification**

3. (1) [New SRO] will provide the Commission with prompt notice of the following events and situations, and in each case describe the circumstances that gave rise to the reportable event or situation, and [New SRO]'s proposed response to ensure resolution, and, if appropriate, provide timely updates:

- (a) changes in the members of [New SRO]'s Board and its committees;
- (b) situations that would reasonably be expected to raise concerns about [New SRO]'s financial viability, including but not limited to, an inability to meet its expected expenses for the next quarter or the next year;
- (c) any determination by [New SRO], or notification from any of the Recognizing Regulators, that [New SRO] is not or will not be in compliance with one or more of the terms and conditions of its recognition in any jurisdiction;
- (d) any material violations of applicable securities legislation of which [New SRO] becomes aware in the ordinary course operation of its activities and activities of its Members;
- (e) any material failures in the controls described in terms and conditions 18(1)(a)(i) and (ii) of Appendix A of the Recognition Order;
- (f) any failure, malfunction, delay or material security incident, including cyber security breaches, of [New SRO]'s critical systems or technology systems that support [New SRO]'s critical systems;
- (g) any breach of security safeguards involving information or data under [New SRO]'s control if it is reasonable in the circumstances to believe that the breach creates a real risk of significant harm to investors, issuers, registrants, other market participants, [New SRO], [New IPF] or the capital markets;

- (h) actual or apparent misconduct or non-compliance by Dealer Members, Approved Persons, marketplace participants, or others, where investors, clients, creditors, Members, [New IPF] or [New SRO] may reasonably be expected to suffer material damage as a consequence thereof, including but not limited to:
  - (i) where fraud appears to be present,
  - (ii) where there is an inadequate compliance system or the Ultimate Designated Person or Chief Compliance Officer fail to perform their responsibilities, or
  - (iii) where serious deficiencies in supervision or internal controls exist.
- (i) situations that would result in material misstatement of the Dealer Member's financial statements or that would reasonably be expected to raise concerns about a Dealer Member's continued viability, including but not limited to, capital deficiency, early warning, and any condition which, in the opinion of [New SRO], could give rise to payments being made out of [New IPF], including any condition which, alone or together with other conditions, could, if appropriate corrective action is not taken, reasonably be expected to:
  - (i) inhibit the Dealer Member from promptly completing securities transactions, promptly segregating clients' securities as required or promptly discharging its responsibilities to clients, other members, or creditors, or
  - (ii) result in material financial loss to the Dealer Member or its clients;
- (j) any action taken by [New SRO] with respect to a Dealer Member in financial difficulty;
- (k) any terms and conditions imposed, varied or removed by [New SRO] relating to a Dealer Member; and
- (l) any enforcement agreement and undertaking entered into, varied or rescinded at [New SRO]'s request relating to a Dealer Member.

## **Quarterly reporting**

- 4. (1)** [New SRO] will file on a quarterly basis with the Commission a written report pertaining to [New SRO]'s regulatory operations promptly after the report is reviewed or approved by the Board, Board committees, or senior management, as the case may be, containing at a minimum the following information and documents:

- (a) a summary of ongoing initiatives, policy changes, and emerging or key issues that arose in the previous quarter for each of [New SRO]'s regulatory operations;
- (b) a summary of innovation or technological initiatives that facilitate Members' development and use of technological advancements to achieve better efficiencies and productivity;
- (c) a summary of all compliance examinations in progress or completed during the previous quarter, and all compliance examinations scheduled to be commenced in the upcoming quarter by [New SRO] office and department, including information on repeat or significant deficiencies;
- (d) a summary of any terms and conditions imposed, varied or removed relating to Approved Persons during the previous quarter;
- (e) a summary of all discretionary exemptions granted to individuals, Dealer Members, and marketplace participants during the previous quarter;
- (f) summary statistics for the previous quarter regarding all client complaints, and complaints received from other sources including, but not limited to, any other securities regulatory authority;
- (g) summary statistics by office for the previous quarter regarding the caseload for each of case assessment, trading review and analysis, market surveillance, investigations and prosecutions, separated between Dealer Member and Marketplace regulation cases, including the length of time the files have been open;
- (h) a summary of enforcement files that were referred to any of the Recognizing Regulators during the previous quarter; and
- (i) [New SRO]'s regulatory staff complement, categorized by function, and details of any changes or reductions in regulatory staffing, by function, during the previous quarter.

## **Annual reporting**

- 5. (1)** [New SRO] will file on an annual basis with the Commission a written report pertaining to [New SRO]'s regulatory operations promptly after the report is reviewed or approved by [New SRO]'s Board, Board committees, or senior management, as the case may be, containing at a minimum the following documents:

- (a) the self-assessment referred to in term and condition 15(10) in Appendix A of the Recognition Order. The self-assessment must contain information as specified by Commission staff from time to time and include the following information:
- (i) an assessment of how [New SRO] is meeting its regulatory and public interest mandate, including an assessment against the recognition criteria in Schedule 1 of the Recognition Order and the terms and conditions in Appendix A of the Recognition Order,
  - (ii) an assessment of its performance as compared to its strategic plan,
  - (iii) a description of trends seen as a result of compliance reviews, investigations and prosecutions conducted, and complaints received, including [New SRO]'s plan to deal with any issues,
  - (iv) whether [New SRO] is meeting its benchmarks, and reasons for any benchmarks not being met,
  - (v) a complete organizational chart,
  - (vi) a description and update on significant projects undertaken by [New SRO],
  - (vii) a description of issues raised by any of the Recognizing Regulators, external auditors or internal audit, which are being tracked by [New SRO]'s senior management, together with a summary of the progress made on their resolution, and
  - (viii) a description of material issues raised and recommendations made by the Regional Councils to the Board, including identification of and written explanation regarding the issues and recommendations that were rejected or only partially adopted by the Board;
- (b) certification by [New SRO]'s CEO and general counsel that [New SRO] is in compliance with the terms and conditions applicable to it in Appendix A of the Recognition Order.

## **Financial reporting**

- 6. (1)** [New SRO] will file with the Commission unaudited quarterly financial statements with notes within 60 days after the end of each financial quarter.
- (2)** [New SRO] will file with the Commission audited annual financial statements accompanied by the report of an independent auditor within 90 days after the end of each fiscal year.

## Other reporting

7. (1) On a timely basis, [New SRO] will provide the Commission with the following information, and documents after publication or completion of review and approval by [New SRO]'s Board, Board committees, or senior management, as the case may be:
- (a) The results from any reviews referred to in term and condition 7(2) in Appendix A of this Recognition Order, if applicable, and a remediation plan or any other relevant documentation;
  - (b) material changes to the Board and employee code of conduct and the written policy about managing potential conflicts of interests of Directors and employees;
  - (c) the financial budget for the current year, together with the underlying assumptions, that have been approved by the Board;
  - (d) the reports referred to in terms and conditions 18(2) and 19(2) in Appendix A of the Recognition Order;
  - (e) the results of benchmarking of surveillance systems and services referred to in term and condition 18(4) in Appendix A of the Recognition Order, together with a summary of the process undertaken and conclusions reached;
  - (f) enterprise risk management reports, and any material changes to enterprise risk management methodology;
  - (g) the internal audit charter, annual internal audit plan, and internal audit reports;
  - (h) the annual report for the current year;
  - (i) the compliance examination plan for the current year;
  - (j) material changes to the compliance or enforcement processes or scope of work, including departmental risk assessment models.
- (2) [New SRO] will provide the Commission with reasonable prior notice of any document that it intends to publish or issue to the public or to any class of Members which, could have a significant impact on:
- (a) its Members and others subject to its jurisdiction; or

(b) the capital markets generally including, for greater clarity, particular stakeholders or sectors.

**(3)** The [New SRO] must not publish or issue any document referred to in subsection 7(2) until the Recognizing Regulators notify the [New SRO] that they have no questions or comments on the publication or issuance of that document.

**(4)** [New SRO] will, upon request and as soon as practicable, provide the Commission with information concerning closed investigations and prosecutions, whether or not resulting in disciplinary actions, including the final investigation report, recommendation memorandum and penalty memorandum, if applicable.