

September 26, 2024

**Submitted via Email**

Attention:

Tatsiana Okun  
Associate General Counsel, Litigation  
Canadian Investment Regulatory Organization  
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Dear Ms. Okun:

**Re: CIRO Rule Consolidation –Addressing Legacy Guidance Notes**

We write with respect to CIRO’s ongoing Rule Consolidation Project and further to our letter dated December 19, 2023 (the IIAC’s “**Phase 1 Comments**”). We appreciate CIRO’s efforts to approach the Rule Consolidation Project in a consultative manner and write to provide further comments on CIRO’s continued publication of guidance notes on legacy IIROC and MFDA rules.

As noted in our Phase 1 Comments, CIRO’s consolidated rules ought to encompass all rules applicable to Dealer Members and should contain a clear statement delineating the consolidated rules from guidance notes, which are designed to provide interpretive guidance on the rules rather than additional obligations. In order to achieve harmonization and clarity in the consolidated rules, CIRO should concurrently take stock of its predecessors’ guidance notes, rule bulletins, and other publications to identify and formally rescind those guidance notes that relate to legacy IIROC or MFDA rules and other outdated, extraneous, or unnecessary matters.

An example is the [Guidance Note on Limitation of Liability Clauses](#), which was published by IIROC on October 10, 2019. This note outlined IIROC’s “findings and analysis along with next steps, to provide transparency and clarity to all Dealers” on the use of limitation of liability clauses in retail investment contracts. Our members prioritize the fair treatment of their clients in any given dispute. The findings and analysis in this note have raised continuous concern, including:

- The proposition that any clauses that purport to limit liability, in whole or in part, for client losses are “not appropriate”; and
- The role of the regulator in seeking to determine the phrasing of these clauses contrary to established law and legal advice.

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The above overlook the legitimate commercial purpose of limitation of liability clauses, the surrounding facts and circumstances that inform their implementation in any given circumstance, and responsible limitations on regulatory interventions. The use and content of limitation of liability clauses in retail client agreements should not be equated to an attempt by Dealer Members to negate or avoid their regulatory obligations. We therefore ask that this Guidance Notice be rescinded.

There are multiple other legacy IIROC and MFDA notices that are either marked as “will be updated as part of a separate project” or “under consideration for future update” or are otherwise due for reconsideration. We are currently reviewing those notices and ask that CIRO do so as well.

We are happy to discuss the issues raised in this letter in further detail.

Respectfully submitted,

***Investment Industry Association of Canada***

cc.

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