

Susan Copland, LLB, BComm
Managing Director
scopland@iiac.ca

Manager of Access and Privacy Strategy and Policy Unit
Ministry of Government and Consumer Services
Enterprise Recordkeeping, Access and Privacy Branch
134 Ian Macdonald Blvd.
Toronto, Ontario
M7A 2C5

October 1, 2020

Dear Sir/Madam:

Re: Consultation: strengthening privacy protections in Ontario (the “Consultation”)

The Investment Industry Association of Canada (the “IIAC”) appreciates the opportunity to participate in the Consultation. The IIAC is the national association representing 114 investment dealer firms, on securities regulation and public policy. Our members are the key intermediaries in Canadian capital markets, accounting for the vast majority of financial advisory services for individual investors, and securities trading and underwriting in public and private markets for governments and corporations.

IIAC members provide financial advisory services to millions of Canadians, collectively holding 6,615,000 full-service brokerage accounts, as well as many other self-directed, digital, and hybrid accounts. In servicing these accounts, our industry is responsible for safeguarding some of our clients’ most sensitive personal information, including the details of, and access to their accounts and financial data.

The IIAC recognizes the importance of having a robust and comprehensive regulatory regime to ensure the privacy of individuals is protected. We believe that the best way of protecting personal information is for Canadian jurisdictions to adhere to the existing federal legislation, as is currently the case for Ontario businesses that are subject to the *Personal Information Protection and Electronic Documents Act* (“PIPEDA”). PIPEDA has proven to be a practical ,

established, and well-understood framework for companies and individuals whose information is protected. Its principles and philosophies are entrenched in the processes and practices of IAC members, each of which has developed a culture of compliance around privacy.

We are concerned that the further expansion of the provincial patchwork of privacy rules will introduce regulatory inconsistencies which will in turn increase uncertainty, create inefficiencies, and increase the cost of compliance for Canadian entities operating within and outside of Canada, and foreign entities seeking to do business in Canada.

Aside from complicating and increasing the cost of trade within Canada, having different privacy regulations within Canada may negatively affect our collective ability to obtain the necessary “adequacy recognition” under the European *General Data Protection Regulation* (“GDPR”) and other international regulations, in a timely manner. This would affect businesses’ ability to efficiently conduct business with Europe and other international jurisdictions. The need to obtain an adequacy ruling from the EU for the regulatory regime in each province, in addition to the federal government, increases the complexity and uncertainty that Canada as a whole will be deemed to have equivalent regulatory protections.

We are particularly concerned about a scenario where EU regulators determine that province A and B are deemed to have adequate regulation, but province C does not. The result would most likely be a finding that Canada as a whole does not have equivalent regulatory protections. Without an adequacy recognition, individual firms would be required to demonstrate their compliance with the GDPR - a potentially significant and costly process¹. The most likely outcome is that in such a scenario, Canadian laws and practices would be subject to additional EU scrutiny.

Rather than creating a new legislative framework and the bureaucratic infrastructure to support new Ontario regulation, we strongly recommend that where there are perceived gaps relating to certain provincial entities, they be dealt with on a targeted basis, using the provisions in PIPEDA as a template for the way in which these situations are handled.

If Ontario elects to create its own separate privacy regime, we urge the Ontario Government to work with the Department of Innovation, Science and Economic Development Canada (“ISED”) and the relevant provincial regulators in British Columbia, Alberta, and Quebec to develop a harmonized privacy regulatory framework uniformly applicable across Canada. Currently, the

¹ Particularly in light of the ruling of the Court of Justice of the European Union, which both eliminated the EU-US Privacy Shield and further restricted the application and scope of the Standard Contractual Clauses of the GDPR.

provincial and federal privacy laws are relatively consistent in terms of content and outcomes. A harmonized approach would also facilitate a simplified interface with the GDPR and other international regulatory regimes that recognize regimes with similar protections.

The IIAC has provided detailed feedback to the consultations previously issued by ISED and the Quebec Government with respect to proposed amendments to their privacy regulation. These submissions articulate our views and concerns about the evolution of privacy regulation, and how best to balance individual protection with the need to encourage innovation and facilitate an efficient business environment. If the Ontario Government moves forward with its own regime, the IIAC would be pleased to work with you in developing proposals in furtherance of strengthening data protection in Ontario.

Thank you for considering our comments. If you have any questions, please don't hesitate to contact me.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'S. Copland', written in a cursive style.

Susan Copland