

CIRO Rule Consolidation kicks off with Phase 1 proposals

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On October 20, 2023, the Canadian Investment Regulatory Organization (CIRO) published for comment [Phase 1 of its Rule Consolidation Project proposals](#). This release is the first in what will be a five-phase approach to consolidating the rules that will apply to all CIRO members, including both investment dealers and mutual fund dealers.

Purpose and scope

The Phase 1 proposals seek to establish a framework for the development of consolidated rules, focusing first on the “Series 1000” rules regarding rule interpretation provisions, definitions of common application, rule exemption provisions and general standards of conduct applicable to all activities of dealers and their employees and approved persons. CIRO acknowledges that, given the material differences it has identified between the existing Mutual Fund Dealer Rules (MFD Rules) and Investment Dealer and Partially Consolidated Rules (IDPC Rules) that will require further consideration as part of the future phases of rule consolidation, the definitions proposed as part of Phase 1 are interim definitions and may need to be revised based on the output of future phases.

Specific proposals relating to the remaining rules will follow in future phases. However, the Phase 1 proposals contain important previews of what some of these changes may entail, and Industry members should start considering now what implications these changes could have for them.

CIRO’s primary objectives underpinning the Rule Consolidation Project are to achieve greater rule harmonization to ensure “like” dealer activities will be regulated in a “like” manner and to minimize regulatory arbitrage between investment dealers and mutual fund dealers. CIRO is seeking to adopt less prescriptive, more principles-based rules that are scalable and proportionate to the different types and sizes of dealers and their respective business models.

The consolidated rules will follow the organizational structure and “Series 1000-9000” numbering approach of the IDPC Rules. They will also be drafted as “standard” rules with, where appropriate, alternative compliance approaches to accommodate different business models.

Key matters for industry participants to consider

Below we highlight several matters contained in the proposals (either as part of Phase 1 or anticipated to be included in coming phases) that industry participants should consider now. The outcome of some of these could have important commercial, competitive, operational and/or structural implications for dealer firms.

Structural approach to delegation

CIRO has identified a difference in how the MFD Rules and IDPC Rules approach the delegation of tasks and activities: the IDPC Rules permit delegation involved in performing a function unless the delegation is specifically prohibited within the rules, while the MFD Rules prohibit delegation assigned in the MFD Rules to individuals with a specific job title, approved person category or individual registration category and/or considered to be securities-related business, unless the delegation is specifically permitted within the rules.

CIRO has adopted the IDPC Rule approach in its Phase 1 proposals, but it is seeking views from industry participants regarding whether that is the preferred approach.

Discontinue ‘discretionary account arrangements’

The IDPC Rules (but not the MFD Rules) contain the concept of “discretionary accounts,” which are advisory accounts for which a client who is frequently or temporarily unavailable to make their own investment decisions has given their advisor *temporary* discretionary authority to make decisions on the client’s behalf. CIRO is proposing to eliminate the offering of the discretionary account arrangement within a future phase of the Rule Consolidation Project on the basis that, with advances in communications methods, clients are generally much more available to make their own investment decisions and, in CIRO’s view, there is no longer a significant need to make these types of arrangements available to investment dealer clients.

Investment dealers should consider to what extent they currently avail themselves of these types of discretionary account arrangements, and whether their elimination might impact their businesses.

Potential expansion of account types available to mutual fund dealers

As part of Phase 1, CIRO is contemplating that the following account types would continue to be available only to investment dealers: direct electronic access accounts, managed accounts and order execution only accounts. However, CIRO has asked industry participants to comment on whether CIRO should consider allowing mutual fund dealers to offer managed accounts and order execution accounts as part of a future phase of the Rule Consolidation Project.

Permitting mutual fund dealers to offer these types of accounts could have significant competitive, commercial and operational implications for industry participants. We urge them to give this question careful consideration.

Continuation of different financial solvency reports

Currently, investment dealers and mutual fund dealers submit different financial solvency reports (Form 1s), which utilize different calculations to determine risk-adjusted capital. Although the Phase 1 proposals contain definitional changes to maintain the status quo at least on an interim basis, CIRO has asked industry members to provide feedback regarding whether two different financial filing forms should be maintained going forward or whether the industry should move to one standard form for all CIRO members.

Factors to consider in harmonizing approved person regime

Material differences exist in the approved persons regime that apply to investment dealers and mutual fund dealers. The extent to which these regimes can be harmonized will be addressed as part of a future phase of the Rule Consolidation Project.

In the interim, the Phase 1 proposals would make certain definitional changes to maintain the status quo until a more fulsome review is conducted. CIRO has asked industry members to provide feedback on what factors it should consider in its future phase work to develop a more harmonized approved person regime.

Use of ‘institutional client’/‘retail client’ distinction

Current IDPC Rules contain the concept of an “institutional client,” which attracts different sales conduct requirements versus those applicable to “retail clients.” There is no such distinction in the Mutual Fund Dealer rules.

CIRO has asked industry participants to provide feedback regarding whether, as part of a future phase of the Rule Consolidation Project, the use of the “institutional client”/“retail client” categorization should be extended to mutual fund dealers and, if so, whether all CIRO dealer members should be given the option of treating all clients as “retail clients” to avoid the burden of having to categorize clients.

CIRO Board to have ability to grant group exemptive relief

The former Mutual Fund Dealers Association (MFDA) General By-law provided the MFDA with the ability to grant exemptive relief, whereas the IDPC Rules only allow the CIRO Board of Directors to grant exemptive relief on a case-by-case basis. In what will be a welcome change, CIRO is proposing to adopt provisions that would enable the CIRO Board of Directors to grant exemptive relief to a group of regulated persons.

Conclusion

Comments on the Phase 1 proposals are due by December 19, 2023. Industry participants are encouraged to provide their perspectives on the Phase 1 proposals, and particularly on some of the more important structural matters outlined above, which will help to shape the development of future phases of the proposals. We would be pleased to assist you in considering how these proposals may affect your business and in making any submissions to CIRO.