It’s time: CIRO tackles incorporated advisors

February 02, 2024

On Jan. 25, 2024 the Canadian Investment Regulatory Organization (CIRO) published its highly anticipated Position Paper setting out the alternative regulatory approaches it is considering to allow payment of advisor compensation to advisor-owned corporations for all dealer-members. Mutual fund dealer representatives have long had the conditional ability to direct that their compensation be paid by their sponsoring dealer to an unregistered corporation, which CIRO has continued to permit for representatives of registered mutual fund dealers and mutual fund representatives of dual-registered dealers. This is an important industry and regulatory issue and one that has been periodically studied at various regulatory and governmental levels since at least the mid-90s.

Although questions on important details remain, the Position Paper is a concrete step forward as it describes three realistic alternatives to permit representatives of all dealers, whether mutual fund dealers, investment dealers or dual-registered firms, to more efficiently structure their compensation in ways that go beyond payment *only* to the individuals, regardless of their status with dealers. CIRO describes this project as important to levelling the playing field for all representatives. Comments are due on the Position Paper by **March 25, 2024**.

Three different options are described in the Position Paper:

1. Allowing “Incorporated Approved Persons”
2. Permitting “Registered Corporations” of Approved Persons
3. Continuing with the directed commission model, but with “enhancements” – “Enhanced Directed Commissions” would be allowed either permanently or on an interim basis while pursuing the permanent adoption of one of the other options.

CIRO staff favor the policy option that would result in the new category of “Incorporated Approved Person,” but emphasize that they will consider moving forward with the Enhanced Directed Commission approach as an interim measure while they work with the Canadian Securities Administrators (CSA) to put in place one of the two other approaches.

The fine print – Tax and securities law considerations

CIRO acknowledges that tax efficiencies for advisors regarding their compensation are a major – and legitimate – regulatory and business consideration in allowing more flexibility than presently permitted. However, CIRO explicitly states that staff has not considered compliance with tax laws and emphasizes that such compliance is the responsibility of advisors and dealers. There will be tax implications that will need to be considered by industry and discussed with the regulators. Among other issues, consideration should be given to the mandatory disclosure rules introduced into the *Income Tax Act* (Canada) effective June 22, 2023.

The Position Paper is a CIRO-regulatory initiative. However, CIRO explains that at least two of the regulatory approaches will need securities regulatory changes, including potentially securities legislative changes, in order to be implemented. These amendments are beyond CIRO's control and there is no discussion in the Position Paper on the position of the CSA on any of the approaches, although the CSA have provided their support publicly to this initiative in recent publications. This is particularly important, given the historical refusal of the Alberta Securities Commission and, more recently, the Autorité des marches financiers in Québec to allow "directed commissions" notwithstanding the current CIRO permission and the other CSA members agreeing to this model since 1998. In our view, regulatory changes to allow for even the "Enhanced Directed Commission" approach for all dealers on a uniform basis across Canada will be necessary, given the current patchwork of rule-based permissions currently only available to mutual fund dealers.

While the Position Paper moves this long-discussed issue forward, there remain many details to be developed, including by the CSA and potentially also provincial legislatures, and it will be important for industry participants to get involved to assist in fleshing out these details and/or to explain why more flexibility should be provided than presently contemplated. It will be important to, once again, be part of this process, which, in our view, now has some solid regulatory momentum behind it and may indeed come to fruition in some form in the not-too-distant future.

The three approaches proposed by CIRO

1. Incorporated Approved Persons (IAP)

Under an IAP approach, a corporation owned by one or more Approved Persons would be approved by CIRO to engage in activities on behalf of the sponsoring dealer, which would permit the dealer to pay all or a portion of the compensation earned by the Approved Person(s) to the IAP. The IAP would be a new non-individual Approved Person category under CIRO rules. CIRO would have the same jurisdiction over the IAP as it currently has over individuals in all other Approved Person categories. At least initially, the IAP would be limited to carrying out non-registrable activities, but CIRO explains that if securities regulatory amendments are implemented by one or more jurisdictions of Canada to enable an IAP to engage in registrable activities, the full potential of this approach would be realized. This dichotomy is not explained in detail, nor is there any discussion about what will constitute "non-registrable" vs "registrable" activity.

The proposed requirements for an IAP approach include (i) written specific agreements amongst the Approved Person(s), the IAP and the dealer (ii) the IAP must be

incorporated as a professional corporation in jurisdictions where that is possible under corporate law (iii) shares of the IAP can only be held by Approved Person(s) and their immediate family and/or family trusts and changes in ownership must be approved in advance by the dealer and (iv) dealers will be required to supervise the IAP and the Approved Persons and will remain liable to clients and third parties for the acts and omissions of the IAP. The IAP may carry on activities for the dealer through the Approved Persons, but all such activity must be conducted in the name of the dealer. Other non-securities related and non-dealer activities can be carried out by the IAP, provided they are approved by the dealer and are limited to "other licensed activities in the financial services industry". All books and records of the IAP regarding the dealer's business remain books and records of the dealer and must be available to the dealer and CIRO. Dealers would be responsible for the due diligence of the IAP to ensure all requirements for an IAP are being adhered to by Approved Person(s) and the IAP.

CIRO explains that it prefers the IAP approach because:

1. It would provide Approved Persons with the ability to engage in non-registrable activities through a corporation, through modification of CIRO rules alone, and provides Approved Persons with the future possibility of performing registrable activities through the IAP, should applicable securities legislation evolve to allow for this.
2. It would enhance investor protection because it provides CIRO with jurisdiction over the IAP and the duties of the IAP, the Approved Persons and the dealer will be clearly delineated.
3. It would impose less incremental burden on Approved Persons, dealers, CIRO and CSA registration staff than would be introduced under the alternative described as the Registered Corporation approach.

2. The Registered Corporation approach

The Registered Corporation approach would allow a corporation owned by Approved Person(s) to be registered in a new category of "registered corporation" and once registered as such, carry on registrable and unregistrable services through the services of the Approved Persons and in the name of the dealer. CIRO signals that a legislative model for registered corporations would be required – that is, this approach cannot be implemented by CIRO alone. The legislative amendments would set out requirements for registration of a registered corporation and may need to provide for statutory rights for investors.

CIRO rules will also set standards for a registered corporation, which will likely include some or all of the same suggested standards for the IAP approach. As with the IAP approach, dealers will be required to supervise a registered corporation and will remain liable to clients and third parties for the acts and omissions of the registered corporation.

CIRO and the applicable CSA members would likely share oversight of registered corporations. Examples of "registered corporation" legislation were passed by the Saskatchewan legislature in 2012 and by the Alberta legislature in 2014. No legislation has been proclaimed in force. It will be important that legislation in the various jurisdictions be conformed as much as possible, given that the past legislation was not uniform in important ways.

3. The Enhanced Directed Commission approach

The Enhanced Directed Commission approach is potentially the least complex option of the three alternatives. In essence it would involve making available - with "enhancements" - the current directed commissions arrangements in place today for many mutual fund Approved Persons, to investment dealer Approved Persons. The enhancements would be also imposed on mutual fund Approved Persons, but with a two-year transition period.

CIRO explains that it could allow for the Enhanced Directed Commission Approach by CIRO rule change alone. Notwithstanding this statement, we consider that it will be important to also review the current CSA rules and positions about the existing directed commission approach to ensure that these rules are amended (or repealed) to clearly permit this flexibility for investment dealers and dual-registered firms.

CIRO proposes to address its concerns with the directed commission approach, through certain enhancements, which would include, ownership limitations on the corporations, limitations on activities that can be carried on by the corporations and more stringent dealer oversight and adherence to compliance expectations.

It is unclear whether CIRO will impose restrictions on the amount or type of compensation that can be directed to be paid to an advisor's corporation, for example, whether it will be limited only to the compensation that relates to "non-registered" activities carried on within the corporation. This is not regulated under the current CIRO/CSA rules and we recommend additional explanation and clarity be provided.

CIRO's major reservation with the Enhanced Directed Commission approach is that the corporation receiving directed commissions would not be approved by and directly under the jurisdiction of CIRO. We consider that this is an important regulatory concern, but one that should be considered further in light of the experience with directed commissions since 1998. CIRO views the Enhanced Directed Commission approach as acceptable primarily as an "interim" measure with the ultimate goal being the implementation of either the IAP or registered corporation approach.

Transition

Regardless of the policy option that is adopted, CIRO recommends a two-year transition period to allow mutual fund dealers and their Approved Persons to comply with any new requirements, although they emphasize that Approved Persons and dealers may immediately take advantage of the new rules and regime once they are implemented.

Specific questions for response

CIRO has requested that stakeholders respond to specific questions:

- Outline which of the approaches is the preferred approach and explain why.
- Are there other requirements not discussed in the Position Paper that CIRO should include in any rule amendments it proposes relating to acceptable compensation approaches?

- Are there other matters not discussed in the Position Paper that CIRO should consider when assessing which policy option to pursue?

BLG/BLG Beyond AUM Law can assist you

It will be important for stakeholders to review the Position Paper and make their views and preferences known to CIRO. Details, including those details not completely discussed in the Position Paper, will be important. We would be pleased to discuss the Position Paper and the options with you. Our tax experts are familiar with the tax implications of the alternatives and would be pleased to discuss these with you. Please contact the authors of this Bulletin or any of the key contacts noted below if we can assist you in understanding the alternatives and/or providing your comments to CIRO by the March 25 deadline.

By

Rebecca A. Cowdery, William Donegan, Kathryn M. Fuller, Julie Mansi

Expertise

Investment Management, AUM Law

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary
Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa
World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver
1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal
1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific

situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.