Appendix D

Summary of Comments Relating to CSA Staff Notice and Request for Comment 25-305 - Application for Approval of the New Investor Protection Fund

This Appendix summarizes the written public comments the CSA received in response to the Application for Approval of the New Investor Protection Fund ("New IPF") and the responses of the CSA and of CIPF and MFDA IPC (the "IPFs") to those comments. Out of the [12] comment letters received, [10] were from industry stakeholders (including registrants, industry associations), and [2] were from non-industry stakeholders (including investor advocates, academics and others). The public comments demonstrated the continued overall support for the New SRO framework adopted by the CSA as outlined in the CSA Position Paper 25-404 *New Self-Regulatory Organization Framework* (**CSA Position Paper**). The CSA and IPFs thank all the stakeholders for participating and providing meaningful commentary, which is summarized and responded to below. Staff from the CSA and IPFs worked collaboratively to produce the summaries and responses, which are categorized by common themes for ease of reference.

This Appendix contains the following sections:

1. Comments and responses on the scope of the Coverage Policy
2. Comments and responses on the implications for investors in Québec as it relates to coverage under the *Fonds d'indemnisation des services financiers*
3. Comments and responses on general matters

1. Comments and responses on the scope of the Coverage Policy

Coverage Limits

A commenter recommended that a periodic review of the $1 million compensation cap be implemented to ensure it continues to fulfill its intended purpose.

The IPFs acknowledge the concerns expressed in relation to the continued appropriateness of the $1 million compensation cap in light of its intended purpose. New IPF, like its predecessors, will undertake regular reviews and assessments of the scope and terms of its coverage policy (and, in that context, will bear such considerations in mind).

Exclusion of crypto assets

Certain commenters submitted that crypto assets, crypto contracts and other crypto-related property should be eligible for New IPF coverage (suggesting that the exclusion of crypto property from coverage represented an amendment to the current coverage policies).

The exclusion of crypto assets in New IPF's Coverage Policy reflects and is consistent with CIPF's current position. The exclusion of crypto property from coverage has been the subject of numerous discussions among regulators, CIPF and crypto industry participants in the context of regulatory applications submitted by crypto industry participants for necessary exemptive relief and is accordingly reflected in exemptive relief decisions issued by CSA members to date, including those of each member of the CSA in the matter of Fidelity Canada ULC dated November 16, 2021. The exclusion of crypto assets from coverage was also expressly addressed in the 2021 CIPF Annual Report.

Like its predecessors, New IPF will undertake regular reviews of the scope and terms of the Coverage Policy, including coverage of crypto assets and other new products.

2. Comments and responses on the scope of coverage, including implications for investors in Québec as it relates to coverage under the *Fonds d'indemnisation des services financiers* (FISF)

Duplication of assessments

A commenter noted that Québec registrants will be faced with duplication of costs, having to contribute to both protection funds once the transition period is over.

The New IPF and the AMF will work together to avoid any duplication of costs for registrants, while avoiding gaps in coverage, both for the transitory and the permanent phase of the AMF's proposed transition plan for mutual fund dealers in Québec. The requirement for Québec MFDs to contribute to the FISF is a legal requirement set out by the *Securities Act*, CQLR, c. V-1.1 and any modifications to this requirement would require a legislative change. Furthermore, the New IPF will not assess mutual fund dealers operating in Québec in respect of customer accounts located in Québec during the transitory phase of the AMF's proposed transition plan for mutual fund dealers in Québec.

Moreover, as indicated in the CSA Position Paper, harmonization of protection fund coverage will be evaluated at a later phase: *"In the second phase, when consideration is given to assessing the feasibility of incorporating other registration categories within the one SRO framework, consideration will also be given to the possibility of providing coverage to clients of the other registration categories and harmonizing the consolidated protection fund with the FISF."*

Future consultation

Certain commenters encouraged the CSA to hold a separate consultation on protection funds and the scope of coverage, in the interest of fairness for consumers and mutual fund dealers in Québec. A commenter further suggested a freeze in contributions to New IPF by mutual fund dealers in Québec pending such consultation.

The need for further consultations is being evaluated with regards to the coverage offered in Québec for mutual fund dealer activities. Per the CSA Position Paper, harmonization of protection fund coverage will be evaluated at a later phase: *"In the second phase, when consideration is given to assessing the feasibility of incorporating other registration categories within the one SRO framework, consideration will also be given to the possibility of providing coverage to clients of the other registration categories and harmonizing the consolidated protection fund with the FISF".*

Initially, New IPF will not assess mutual fund dealers operating in Québec in respect of customer accounts located in Québec and coverage will not be provided in respect of such customer accounts by New IPF.

Harmonization of coverage

Certain commenters noted the importance of the completion of the financing structure of the protection funds and of the alignment of coverage granted to investors in all Canadian jurisdictions (rather than maintaining separate funds).

The IPFs note that during a transition period following the formation of New IPF, New IPF will conduct an analysis of the insolvency risks for different types of dealers and based on that analysis will further develop its assessment methodologies and review its liquidity sources. During this transition period, CSA approval will be required for any change in the formula(s) or methodology(ies) for, or principles governing, the assessment to be levied by New IPF, where such change could result in a material increase in the assessment(s) to be levied. Once New IPF has completed its assessment of the insolvency risks of various dealer categories and has developed appropriate assessment methodologies, it will consider whether to merge the funds maintained for clients of investment dealers and clients of mutual fund dealers.

One commenter urged the consolidation of the investor protection fund coverage functions in Québec to be consistent with coverage in other Canadian jurisdictions.

One commenter noted that clients of mutual fund dealers in each province and territory, other than Québec, and clients of investment dealers in each province and territory (including Québec) will have the benefit of coverage from New IPF in accordance with its coverage policy, while clients of mutual fund dealers in Québec will continue to have the benefit of coverage from FISF. The commenter noted that the types of risks covered by the FISF, namely fraud, fraudulent tactics and embezzlement, are not the same risks as those that will be covered by New IPF, namely insolvency.

A number of commenters suggested that New IPFs coverage policies should be extended to customers who suffer a loss as a result of fraud or other misconduct involving a dealer.

The IPFs acknowledge the fact that the coverage to be offered by New IPF, and as currently offered by the MFDA IPC and CIPF, is different than the coverage currently offered by the FISF in certain respects. The aim of New IPF will be to maintain the coverage currently available to investors in each jurisdiction upon its formation in order to maintain the status quo in the interim.

The IPFs further acknowledge that the coverage policies of CIPF and MFDA IPC do not provide coverage for loss due to financial fraud or other misconduct involving a dealer that is not insolvent. Rather, their coverage policies provide coverage in the event of a loss due to the insolvency of a dealer, whether or not financial fraud of a dealer contributed to the loss. In the event of a loss due to financial fraud involving a dealer, a client's recourse is expected to be against the dealer, assuming the dealer is not insolvent. Clients of mutual fund dealers in Québec may also have a claim against the FISF to the extent permitted by its coverage policy. New IPF, like its predecessors, will undertake regular reviews and assessments of the scope and terms of its coverage policy, including the risks covered.

New IPF will respond to and participate in regulatory initiatives seeking to harmonize coverage in all Canadian jurisdictions.

As stated in the CSA Position Paper, harmonization of protection fund coverage will be evaluated at a later phase of the project: "*In the second phase, when consideration is given to assessing the feasibility of incorporating other registration categories within the one SRO framework, consideration will also be given to the possibility of providing coverage to clients of the other registration categories and harmonizing the consolidated protection fund with the Fonds d'indemnisation des services financiers in Québec.*"

3. Comments and responses on general matters

A commenter recommended continued use of the name "CIPF" to minimize client and dealer operational disruption.

The IPFs have determined that the English name of New IPF will be "Canadian Investor Protection Fund" which is the same as CIPF's name. They have also determined that the French name of New IPF will be "Fonds canadien de protection des investisseurs" which is different from CIPF's current French name, Fonds canadien de protection des épargnants. The Boards of the IPFs decided to maintain the CIPF name (with the slight correction in its French version) in light of the recognition of the name and in an effort to minimize the costs associated with changes to an entirely new name.

Documentation

A commenter recommended that current references in firms' documents CIPF and MFDA IPC should remain as is pending finalization of both the names of the new investor protection fund (New IPF) followed by a transition period of 18 months to amend documents to reflect the name of New IPF, while another commenter advocated for transitional grace periods designed to ensure orderly and efficient transition to the name and logo of New IPF in all client facing disclosures, documents and signage.

The IPFs have considered the commenters' concerns. While New IPF's Disclosure Policy will become effective on January 1, 2023, the policy will include transitional provisions. New SRO members will be required to comply with all provisions of New IPF's Disclosure Policy no later than December 31, 2024 (other than members granted membership after January 1, 2023, who shall be required to comply with all provisions of New IPF's Disclosure Policy no later than June 30, 2023). Pending a New SRO member's compliance with all provision of New IPF's Disclosure Policy, the member shall be required to continue to comply with all disclosure requirements applicable to it before the amalgamation of the IPFs and all references in the New SRO member's disclosure, website and documentation to an IPF shall be deemed to be a reference to New IPF.

Costs of Amalgamation

One commenter noted that entities previously operating dual platforms will realize significant internal savings and should therefore bear the amalgamation costs relating to the creation of New IPF and any cost savings should be fairly distributed across the membership.

To the extent that cost savings are ultimately realized by New IPF, such savings will be taken into account by New IPF when setting assessments for all New SRO members whose clients have the benefit of coverage under the Coverage Policy. The costs associated with the formation of New IPF will be borne by New IPF (including its predecessors, the IPFs) and factored when assessment rates are set, either as a separate assessment or included in the overall assessments.