ANDREW J. KRIEGLER
President and Chief Executive Officer

November 15, 2016

Financial Institutions Division
Financial Sector Policy Branch
Department of Finance Canada
James Michael Flaherty Building
90 Elgin Street
Ottawa ON K1A 0G5

By email: LegislativeReview-ExamenLegislatif@canada.ca

Dear Sirs/Mesdames:

Re: *Supporting a Strong and Growing Economy: Positioning Canada's Financial Sector for the Future – A Consultation Document for the Review of the Federal Financial Sector Framework* (the "Consultation Paper")

Thank you for this opportunity to contribute to the Government's discussion surrounding the federal financial sector legislative and regulatory framework and its Consultation Paper. We strongly support this initiative to better position the Canadian financial sector for the future.

As the national public interest self-regulatory organization (SRO) which oversees all investment dealers and trading activity on debt and equity marketplaces in Canada, IIROC works to protect investors and support healthy capital markets across Canada.[1]

[1] IIROC is recognized as an SRO by each provincial securities authority across the country. These authorities make up the Canadian Securities Administrators ("CSA") and are collectively responsible for the oversight of IIROC.

Investment Industry Regulatory Organization of Canada
Organisme canadien de réglementation du commerce des valeurs mobilières

121 King St. West, Suite 2000
Toronto, ON M5H 3T9
Tel 416-364-6133
www.iiroc.ca

The investors we seek to protect include retail investors: ordinary, hard-working Canadians who invest to build their savings and fund their retirements.

In fulfilling our investor protection mandate we intersect with the federal financial framework, as a number of the firms we regulate are also regulated by the Office of the Superintendent of Financial Institutions (OFSI). IIROC also works together with the Canadian Deposit Insurance Corporation (CDIC) with respect to our common member firms and with other federal agencies.

Our comments in response to the Consultation Paper address four general areas:

i. IIROC's role within the federal and national financial framework;
ii. Areas in which risk in the system can be minimized or mitigated;
iii. Regulating innovation; and
iv. Measures to improve investor protection.

A. IIROC – Who We Are and What We Do

In carrying out our public interest mandate, we perform a number of critical functions as a financial industry regulator:

i. Registration (Licensing)

We undertake a rigorous regulatory approval process for investment dealers (also referred to as Dealer Members) and their partners, directors, officers and staff (including investment advisors) who conduct or supervise regulated activities. Individuals wanting to work at IIROC-regulated firms in specific roles must apply to IIROC for approval and meet specific regulatory and proficiency requirements and maintain high ethical standards.

IIROC regulates over 28,000 individuals nationwide, in approximately 170 Dealer Member firms.

ii. Policy

IIROC establishes new rules, and amends and interprets existing rules, all with the goal of promoting high standards for the investment industry and a strong culture of compliance among IIROC-regulated firms and individuals and fair and efficient capital markets. Where possible and appropriate, we try to ensure our rules are harmonized with other regulators, including the CSA.

iii. Compliance

We conduct compliance reviews in three areas:

a) We conduct **financial compliance** reviews and set minimum capital requirements to ensure that firms have enough capital for the specific nature and volume of their business. This reduces the possibility of firms failing, by preventing excessive leverage and risky business practices. IIROC-regulated firms also participate in the Canadian Investor Protection Fund (CIPF) which protects individual investors in the unlikely event that a firm should go bankrupt.
b) We conduct **business conduct compliance** reviews to check that firms have procedures in place to properly supervise the handling of client accounts and that advice and transactions appropriately reflect the client's needs and instructions.
c) We conduct **trading conduct compliance** reviews to check trading firms' trade-desk and supervision procedures.

iv. Market Surveillance

We conduct market surveillance and trading review and analysis to ensure that trading is carried out in accordance with our rules and applicable provincial securities law and escalate potential instances of non-compliance for further review if appropriate.

v. Enforcement

IIROC's Enforcement department is responsible for the enforcement of IIROC's Dealer Member Rules, relating to the sales, business and financial conduct of IIROC-regulated firms and their

registered employees, as well as the Universal Market Integrity Rules (UMIR) relating to trading activity on all Canadian equity marketplaces.

Where IIROC initiates formal disciplinary action against a respondent (an IIROC-regulated firm or individual registrant) a formal hearing takes place before an independent expert administrative panel.

B. We Work with Other Regulators and Stakeholders

We recognize the need for actors in the financial framework, both at the provincial and federal levels, to work in concert. Doing so improves efficiencies in the system, and reduces arbitrage opportunities.

The most important relationship we have, of course, is with the provincial securities authorities. We perform our functions at their behest. We also help them to optimize the effectiveness and efficiency of their regulation by, using one example, sharing the information we collect and maintain regarding trading on the debt and equity marketplaces in Canada. By sharing our rich dataset, we promote market integrity and increase efficiency by avoiding cost duplication.

IIROC has entered into information sharing agreements with other regulators as well, including very recently, with CDIC. IIROC and CDIC signed a Memorandum of Understanding that will allow us to better protect depositors and investors through enhanced cooperation when a CDIC member institution or a connected IIROC-regulated firm encounters serious financial difficulties.

We have similar agreements with several of our regulatory partners in the insurance sphere, which allow us to share information regarding our common registrants or licensees. These agreements allow us to work together to eliminate any arbitrage opportunities, where wrongdoers attempt to move to another part of the financial sector after having been disciplined in one sector.

C. The Core Policy Objectives – Stability, Efficiency and Utility

We agree with the identification of these three objectives as the guiding principles in the development of financial sector policy. In our view, the key to success is finding the appropriate balance between the three objectives, which ensures that the system is also fair for all parties involved.

We have addressed our specific comments in the context of the three objectives below.

1. *Stability – The sector is safe, sound and resilient in the face of stress*

Stability is ensured when risks are appropriately identified, monitored and managed.

We fully agree with the stated view in the Consultation Document that sound capital markets in Canada are essential to creating conditions for economic growth, and support efforts generally to manage systemic risk.

One of the necessary components in the assessment and management of risk is the collection of information. As noted above, IIROC monitors trading of equity securities on and across all Canadian stock exchanges and Alternative Trading Systems (ATSs), as well as all fixed income trading conducted by its Dealer Members through various fixed income ATSs, Inter Dealer Bond Brokers or in the over-the-counter market.

Recently, IIROC was selected by the CSA to act as the Information Processor for corporate debt securities. As an information processor, IIROC collects and makes publicly available transaction information for corporate debt securities. IIROC's corporate bond information site demonstrates how we can leverage the information that we collect as a public interest regulator to increase transparency and improve market integrity, without duplicating efforts or costs.

IIROC currently collects and maintains rich information regarding trades on Canadian marketplaces. We are *de facto* the trade repository for debt and equity markets today. To the extent that IIROC can continue to support the Government and the financial sector in being a

resource and sharing the information we already collect, we would be pleased to do so. Utilizing IIROC for this information avoids duplication and inefficiency in the system.

A second component is the ability to move quickly and efficiently when a risk materializes. Although not specifically identified in the Consultation Document, the *Bankruptcy and Insolvency Act* (BIA) is a key part of the federal financial sector legislative framework.

As noted above, IIROC plays a prudential role, ensuring that its Dealer Members are adequately capitalized. Inadequate capital can result in a firm's suspension or termination from IIROC, and render a firm insolvent. As thousands of Canadians invest their hard-earned savings with these firms, an insolvency has the potential to have a significant adverse impact. One way that impact is mitigated is through the Canadian Investor Protection Fund (CIPF). CIPF is the customer protection fund for customers of insolvent investment dealers which are members of IIROC.

Provisions in the BIA speak specifically to the insolvency of a securities firm (including IIROC Dealer Members). Currently, although IIROC is identified as a self-regulatory organization within the meaning of the BIA, it does not have the ability to file an application for a bankruptcy order under the BIA in respect of an insolvent securities firm. Further, the suspension of a securities firm by a self-regulatory organization is not currently deemed an act of bankruptcy.

IIROC supports the following amendments being made to the BIA in order to promote efficiency in securities firm bankruptcies and to ensure the timely transfer of customer accounts:

i. To permit SROs to file an application for a bankruptcy order in respect of an insolvent securities firm which is a member of the SRO;
ii. To permit a customer compensation body to file an application for a bankruptcy order in respect of an insolvent securities firm which is a member of an SRO and which has been suspended by the SRO;

iii. To allow the suspension of a securities firm by an SRO to constitute an act of bankruptcy if it *results in* the failure of the firm to meet capital adequacy requirements (as opposed to the suspension being *due to* a failure to meet capital adequacy requirements); and

iv. To update the definitions of 'security' and 'customer' to reflect the enactment of uniform securities transfer legislation in several provinces and to include a 'securities entitlement'.

Details of the specific amendments sought are outlined in Appendix A.

Making these amendments improves the efficiency and timeliness of the process if the risk of an insolvency materializes. Ultimately, such improvements result in increased protection for Canadian investors.

2. Efficiency – The sector provides competitively priced products and services, and passes efficiency gains to customers, accommodates innovation, and effectively contributes to economic growth

This sector is consistently faced with fast-paced change. The challenge for the Government and regulators is how to respond to that change without stifling the advancements, innovation and progress change brings.

One of the latest developments impacting the sector is automated or 'robo' advice, which involves the provision of advice using an online platform. This new operating model is being introduced both by new entrants into the sector and existing players. These new developments will test the agility of the regulators. Regulators will need to not only respond to this new method of investing (and do so quickly), but also must recognize the impact this innovation has on the rest of the system. How we will regulate this new area and what changes are required will be at the forefront of our activities in the near term.

IIROC's rules are technology neutral; as principles-based rules, they allow for flexibility in order to respond in real time to emerging technologies. However, one of IIROC's compliance

priorities this year involves developing methodologies to test these new online business models for compliance.

The additional challenge outlined in the Consultation Paper with respect to small and medium-sized financial institutions apply equally to securities dealers. Like our federal counterparts, IIROC is mindful of the need to manage compliance burdens and ensure that these small and medium-sized firms are considered when new policies and requirements are developed.

Ultimately, we should all strive for proportionate regulation - recognizing that “one size fits all” regulation may be attractive from a regulator or government’s perspective, but is not optimal. We must all recognize the importance of diversity in the marketplace as a driver of competition, innovation and as a result, economic growth.

3. Utility – The sector meets the financial needs of an array of consumers, including businesses, individuals and families, and the interests of consumers are protected.

As a public interest regulator, the protection of consumers is a priority for IIROC. In particular, we focus on seniors, who make up one of the more vulnerable segments of the investing population. As identified in the Consultation Paper, older Canadians may be vulnerable to fraud and financial abuse. In fact, seniors are the largest demographic group contacting IIROC with complaints and inquiries.

We agree with the Government that education and financial literacy efforts can target some of these issues. IIROC develops numerous resources for seniors to assist them in making informed decisions and protecting themselves from risk. In addition to our own initiatives, we also work together with many other stakeholders. For example, recently we partnered with the Financial Consumer Agency of Canada to deliver resources for seniors to assist them in making informed decisions and protecting themselves.

These financial literacy initiatives help all consumers to help themselves. However, we as regulators of course also have an important role to play to protect investors.

In order to assist us in successfully playing that role, we are seeking amendments to provincial securities legislation that will allow us to more effectively regulate the capital markets and its participants across the country in the public interest and for the protection of investors. Specifically, we are seeking:

i. the ability to file our disciplinary decisions with the superior courts in order to collect our fines;
ii. the ability to compel evidence in our disciplinary investigations and hearings; and
iii. immunity for regulatory actions we undertake in good faith.

We are asking for these provisions to be included in legislation in each province and territory because we believe they are necessary and will make us a better, more effective public interest regulator. Our view is that making these changes strengthens and confirms the importance of the protection of investors in Canada. It ensures that those who engage in misconduct – who steal money from clients, who trade in clients' accounts without permission, who fail to follow the rules and as a result, cause ordinary investors to lose their retirement savings – will be held to account for their actions regardless of which province they live in.

Although not affecting federal legislation, this Government's support for these initiatives is critical. We have a shared national public interest mandate to protect investors. Strengthening and enhancing the credibility of IIROC as a pan-Canadian regulator demonstrates and affirms this Government's commitment to achieving our shared mandate.

In Conclusion

The Consultation Paper indicates that one of its purposes is to identify areas for potential action. In this submission we have tried to highlight both general principles we believe should guide this Government, together with specific 'action items' for it to consider. We also hope to have conveyed our willingness to continue to play a role in the system and more importantly, to play the role this Government wants us to play in furtherance of our shared objective of supporting a strong and growing economy.

Sincerely,

Andrew J. Kriegler
President and Chief Executive Officer

APPENDIX A

PROPOSED AMENDMENTS TO THE

BANKRUPTCY AND INSOLVENCY ACT, R.S.C., 1985, c. B-3[2]

(changes are underlined)

Draft amendments to Sections 253 and 256 of the *Bankruptcy and Insolvency Act* (Canada) (changes are marked):

Section 253:

"customer" includes

(a) a person with or for whom a securities firm deals as principal, or agent or mandatary, and who has a claim against the securities firm in respect of a securities entitlement, or a security received, acquired or held by the securities firm, in the ordinary course of business as a securities firm from or for a securities account of that person

(i) for safekeeping or deposit or in segregation,

(ii) with a view to sale,

(iii) to cover a completed sale,

(iv) pursuant to a purchase,

(v) to secure performance of an obligation of that person, or

(vi) for the purpose of effecting a transfer,

(b) a person who has a claim against the securities firm arising out of a sale or wrongful conversion by the securities firm of a security referred to in paragraph (a), and

(c) a person who has cash or other assets held in a securities account with the securities firm,

but does not include a person who has a claim against the securities firm for cash or securities that, by agreement or operation of law, is part of the capital of the securities firm or a claim that is subordinated to claims of creditors of the securities firm;

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[2] The text of the sections of the *Bankruptcy and Insolvency Act* (Canada) are from the version that was last amended on February 26, 2015, available at http://laws-lois.justice.gc.ca/eng/acts/b-3/

"security" means any document, instrument or written or electronic record that is commonly known as a security or is a securities entitlement and includes, without limiting the generality of the foregoing,

(a) a document, instrument or written or electronic record evidencing a share, participation right or other right or interest in property or in an enterprise, including an equity share or stock, or a mutual fund share or unit,

(b) a document, instrument or written or electronic record evidencing indebtedness, including a note, bond, debenture, mortgage, hypothec, certificate of deposit, commercial paper or mortgage-backed instrument,

(c) a document, instrument or written or electronic record evidencing a right or interest in respect of an option, warrant or subscription, or under a commodity future, financial future, or exchange or other forward contract, or other derivative instrument, including an eligible financial contract, and

(d) such other document, instrument or written or electronic record as is prescribed.

Section 256:

(1) In addition to any creditor who may file an application in accordance with sections 43 to 45, an application for a bankruptcy order against a securities firm may be filed by

(a) a securities commission established under an enactment of a province, if

(i) the securities firm has committed an act of bankruptcy referred to in section 42 or subsection (2) of this section within the six months before the filing of the application and while the securities firm was licensed or registered by the securities commission to carry on business in Canada, and

(ii) in the case in which the act of bankruptcy was that referred to in subsection (2), the suspension referred to in that subsection is in effect when the application is filed;

(b) a securities exchange or self-regulatory organization recognized by a provincial securities commission, if

(i) the securities firm has committed an act of bankruptcy referred to in section 42 or subsection (2) of this section within the six months before the filing of the application and while the securities firm was a member of the securities exchange or self-regulatory organization, and

(ii) in the case in which the act of bankruptcy was that referred to in subsection (2), the suspension referred to in that subsection is in effect when the application is filed;

(c) a customer compensation body, if

(i) the securities firm has committed an act of bankruptcy referred to in section 42 or subsection (2) of this section within the six months before the filing of the application and while the securities firm had customers whose securities accounts were protected, in whole or in part, by the customer compensation body, and

(ii) in the case in which the act of bankruptcy was that referred to in subsection (2), the suspension referred to in that subsection is in effect when the application is filed; and

(d) a person who, in respect of property of a securities firm, is a receiver within the meaning of subsection 243(2), a receiver-manager, a liquidator or any other person with similar functions appointed under a federal or provincial enactment relating to securities that provides for the appointment of that other person, if the securities firm has committed an act of bankruptcy referred to in section 42 within the six months before the filing of the application.

(2) For the purposes of paragraphs (1)(a) to (c),

(a) the suspension by a securities commission referred to in paragraph (1)(a) of a securities firm's registration to trade in securities, or

(b) the suspension by a securities exchange or self-regulatory organization referred to in paragraph (1)(b) of a securities firm's membership in that exchange or organization

constitutes an act of bankruptcy if the suspension is due to or results in the failure of the firm to meet capital adequacy requirements.

(3) If

(a) a securities exchange or self-regulatory organization files an application under paragraph (1)(b), or

(b) a customer compensation body files an application under paragraph (1)(c),

a copy of the application must be served on the securities commission, if any, having jurisdiction in the locality of the securities firm where the application was filed, before

(c) any prescribed interval preceding the hearing of the application, or

(d) any shorter interval that may be fixed by the court and that precedes the hearing of the application.