October 21, 2026

Member Regulation Policy
Canadian Investment Regulatory Organization
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Copies to the Canadian Securities Administrators (CSA):

Market Oversight, Alberta Securities Commission (CIRO-Reporting@asc.ca)
Trading and Markets, Ontario Securities Commission (TradingandMarkets@osc.ca)

Re: Bulletin 26-0150 - Rule Amendments Relating to the Proposed Adoption of an Incorporated Approved Person Compensation Option

Dear Member Regulation Policy:

I am writing in response to CIRO's request for comments on the proposed adoption of an Incorporated Approved Person compensation option.

I support regulatory modernization where it produces demonstrable benefits without weakening investor protection. However, incorporation introduces an additional legal entity into what is already a complex relationship among the client, individual advisor and Dealer Member. The central test should therefore be straightforward: **a client must never be placed in a worse legal, evidentiary, procedural or financial position because an advisor has chosen to operate through a corporation rather than as an individual employee or agent of the Dealer Member.**

The proposed structure should be approved only if this principle is embedded directly and unambiguously in the final rules.

1. Background and perspective

By way of background, I have spent many years researching issues involving banking, investment products and financial regulation, and I have taught courses in banking and finance. I also researched and served as the class representative in the foreign-exchange class action involving registered investment accounts that ultimately resulted in approximately $100 million being returned to about 135,000 investors. That experience has given me a particular interest in the practical operation of investor-protection rules, the allocation of responsibility among financial institutions and intermediaries, and whether regulatory structures provide clear and effective accountability when problems arise.

One lesson from that experience is that rules should be designed for what happens **when something goes wrong**, not simply for circumstances in which all parties are acting properly.

Adding an advisor corporation potentially introduces another party, another contract, another insurer and another possible allocation-of-responsibility dispute. CIRO should therefore ensure before implementation that incorporation adds regulatory accountability rather than diffusing it.

2. Incorporation must add accountability, not dilute it

The Incorporated Approved Person should be an additional accountable party. It should never replace or diminish the responsibilities of either the individual Approved Person or the Dealer Member.

The rules should expressly provide that:

2.1 The individual Approved Person remains personally accountable for all applicable CIRO requirements and standards of conduct.

2.2 The Incorporated Approved Person is separately accountable for its conduct and that of persons acting through it.

2.3 The Dealer Member remains fully responsible for supervising all securities-related activities carried on by the individual and corporation on its behalf.

2.4 The Dealer Member cannot contract out of, transfer, delegate or otherwise reduce its regulatory responsibility to clients by relying upon the separate legal personality of the Incorporated Approved Person.

These responsibilities should be cumulative rather than alternative.

3. Dealer liability and the client's right of recovery

The introduction of a corporation should not require a client to determine which entity was legally responsible before seeking redress.

Where conduct occurred in connection with the Dealer Member's business, the client should be entitled to proceed directly against the Dealer Member without first exhausting remedies against either the individual advisor or the corporation.

The final framework should establish that:

3.1 Dealer responsibility to the client is non-waivable.

3.2 A Dealer Member may not require the client to pursue the corporation or advisor first.

3.3 Internal agreements allocating liability among the Dealer Member, advisor, corporation and insurers cannot delay or restrict the client's claim.

3.4 Termination of the advisor, dissolution of the corporation, retirement, death, insolvency or a change in Dealer Member must not extinguish responsibility for conduct that occurred while the relationship existed.

CIRO should also consider whether the legislation or rules should expressly establish joint and several responsibility for Dealer Member-related conduct. That would materially reduce the risk of a client becoming trapped in an argument among the Dealer Member, corporation and advisor over which party bears ultimate responsibility.

4. Approval must be exclusively tied to one Dealer Member

This requires particular clarification in the final rules.

An Incorporated Approved Person and its controlling individual should be permitted to operate under the CIRO approval **for one, and only one, sponsoring Dealer Member at any particular time**.

There should be no unstated grey zone concerning concurrent, overlapping, divided or transitional responsibility.

Accordingly:

4.1 As a condition of CIRO approval, both the individual Approved Person and the Incorporated Approved Person should be required to sign an express acknowledgement that the approval relates exclusively to the identified sponsoring Dealer Member.

4.2 The agreement should state expressly that the Incorporated Approved Person has no authority under that approval to conduct securities-related business for, through, in association with, or on behalf of another Dealer Member.

4.3 Concurrent sponsorship of the same Incorporated Approved Person by two or more Dealer Members should not be permitted.

4.4 There should be no implied exception, informal arrangement, temporary overlap, transitional grace period or contractual interpretation capable of producing simultaneous responsibility involving more than one Dealer Member.

4.5 If the advisor changes Dealer Members, the existing dealer-specific approval should cease before activity begins through the succeeding Dealer Member, and the new relationship should require a new documented approval and agreement.

4.6 The client should always be capable of determining from CIRO's records which single Dealer Member was responsible for the Incorporated Approved Person at the relevant time.

The reason for this is fundamental investor protection. When misconduct, negligence or an operational failure is alleged, a client should not have to establish retrospectively which of two Dealer Members supervised the advisor, which dealer approved the conduct, which dealer's insurance responds, or whether the activity occurred during a period of overlapping sponsorship.

There should always be **one clearly identifiable Dealer Member with direct supervisory accountability**.

5. Dealer compliance and supervision must remain non-delegable

The existence of a corporate entity should not reduce the Dealer Member's existing compliance obligations.

The corporation may establish internal procedures and supervise its own employees, but those arrangements should supplement rather than replace Dealer Member supervision.

The final rules should expressly prohibit a Dealer Member from defending a compliance failure on the basis that:

5.1 the Incorporated Approved Person was expected to supervise the activity;

5.2 the individual advisor failed to comply with the corporation's procedures;

5.3 an employee or contractor was employed by the corporation rather than the Dealer Member; or

5.4 the corporation had represented that it was complying with CIRO requirements.

The Dealer Member should remain responsible for having an effective system reasonably designed to supervise the activities being conducted on its behalf.

6. Activities conducted outside the Dealer Member's business

A significant potential problem arises where an Incorporated Approved Person provides several services to the same client.

For example, a recommendation could involve investment advice, insurance, borrowing, tax considerations, estate planning or other financial planning activities. A later dispute could produce disagreement as to which portion constituted securities-related business conducted for the Dealer Member and which portion constituted another activity of the corporation.

The final rules should therefore require a clear and practical allocation of activities **before** services are provided, rather than leaving that determination to be litigated after a loss occurs.

Where activities are sufficiently integrated that a reasonable client would understand them to form part of one overall investment recommendation, the Dealer Member should not be permitted to escape responsibility merely by characterizing one component retrospectively as an outside activity.

7. Prospective client disclosure

Clients should be told about the incorporated structure before entering or continuing the relationship.

The disclosure should be short, standardized and written in plain language.

It should clearly state:

7.1 the legal name of the Incorporated Approved Person;

7.2 the name of the individual Approved Person;

7.3 the identity of the one sponsoring Dealer Member;

7.4 that incorporation does not reduce the Dealer Member's responsibility to supervise Dealer Member-related activities;

7.5 that the client is not required to pursue the corporation or advisor before complaining to or seeking recovery from the Dealer Member; and

7.6 which activities offered by the corporation, if any, are outside the Dealer Member's responsibility.

Disclosure should not be used as a means of shifting legal responsibility to the client.

8. Complaint handling

The introduction of an Incorporated Approved Person should not introduce another stage into the complaint process.

A complaint delivered to any of the Dealer Member, individual advisor or Incorporated Approved Person concerning Dealer Member-related activities should constitute notice to all relevant parties.

The Dealer Member should remain responsible for the formal handling, investigation and response to the complaint.

The client should not be told to complain first to the corporation or wait while the corporation and Dealer Member determine which entity accepts responsibility.

Internal allocation can occur afterward. It should not become the client's problem.

9. Insurance

The insurance structure should likewise be designed around client protection.

Dealer insurance should respond to Dealer Member-related conduct irrespective of whether that conduct was physically performed by:

9.1 the individual Approved Person;

9.2 the Incorporated Approved Person; or

9.3 an employee or other person operating through the Incorporated Approved Person within the approved arrangement.

Disputes between insurers over priority, indemnification or contribution should not delay resolution of the client's claim.

Coverage should also survive termination of the corporate arrangement for conduct occurring while the relationship was in force.

10. Written agreements and indemnification provisions

CIRO proposes a written agreement among the Dealer Member, the corporation and the individual.

CIRO should review the substance of these agreements, not simply require their existence.

In particular, agreements should not contain provisions that could indirectly undermine the regulatory allocation of responsibility through broad indemnities, exclusions, limitations or representations that effectively place Dealer Member compliance obligations upon the corporation.

Dealers and Incorporated Approved Persons may allocate financial responsibility between themselves. They should not be able to use those private arrangements to reduce the rights of clients.

11. Tax treatment should not be assumed

Incorporation may provide legitimate business, succession and tax-planning advantages. However, securities-regulatory approval does not determine whether an advisor's corporation qualifies for the small business deduction or is treated by the Canada Revenue Agency as a personal services business.

The applicability of the personal services business rules depends upon the factual relationship among the individual, corporation and payer.

CIRO should therefore avoid presenting incorporation as inherently or universally tax advantageous and should require Dealer Members to avoid representations suggesting that CIRO approval constitutes confirmation of favourable Canada Revenue Agency treatment.

This is particularly important because one of the stated rationales for incorporation relates to financial viability. The extent of the economic benefit may vary substantially among advisors.

12. Access to personalized advice has not yet been demonstrated

CIRO has suggested that increased financial viability for advisors could increase Canadians' access to regulated advice.

That is a proposition that should be tested empirically rather than assumed.

There is no necessary connection between permitting incorporation and increasing personalized advice for lower-income or smaller-account Canadians.

Any economic benefit could instead be reflected in greater retained earnings, advisor compensation, practice values, recruitment incentives or Dealer Member economics without producing any measurable increase in access for underserved investors.

CIRO should therefore establish measurable objectives against which the claimed access benefit can later be assessed.

13. No-accountability-gap principle

I recommend that CIRO adopt an express overarching principle:

> **No client shall suffer any reduction in legal rights, regulatory protection, complaint rights, access to compensation, evidentiary access, insurance protection or Dealer Member accountability as a consequence of an Approved Person conducting business through an Incorporated Approved Person.**

Where uncertainty arises concerning whether responsibility rests with the Dealer Member, corporation or individual advisor, the regulatory structure should resolve that uncertainty in a manner that preserves rather than diminishes the client's protection.

14. Minimum safeguards before implementation

Before implementation, I recommend that the final framework include, at minimum:

14.1 exclusive dealer-specific approval of every Incorporated Approved Person;

14.2 an express signed acknowledgement by the corporation and individual that the approval relates to one Dealer Member only;

14.3 continuing and non-delegable Dealer Member supervisory responsibility;

14.4 clear Dealer Member liability for conduct carried on on its behalf;

14.5 consideration of express joint and several liability;

14.6 a single Dealer Member-controlled complaint process;

14.7 prohibition against requiring the client to pursue the corporation first;

14.8 standardized advance client disclosure;

14.9 clear treatment of integrated or ancillary financial activities;

14.10 insurance arrangements that prevent coverage disputes from delaying client compensation;

14.11 preservation of Dealer Member records and access after termination or dissolution;

14.12 prohibition against contractual provisions that reduce client rights or Dealer Member regulatory responsibility; and

14.13 public reporting sufficient to determine whether incorporation actually produces the investor benefits claimed for it.

15. Mandatory genuinely independent post-implementation review within three years

Because this represents a significant structural change to the advisor-Dealer Member relationship, CIRO should commit in the final rule package to a formal and genuinely independent post-implementation review.

The independence of the reviewer is essential. It should not be sufficient simply to designate an individual as an "independent" reviewer. **Independence should exist in substance as well as in form and should be capable of objective verification.**

The review should be conducted by a suitably qualified independent professional who is personally subject to recognized professional standards, ethical obligations and disciplinary accountability. A Chartered Professional Accountant, or another comparably qualified regulated professional with appropriate expertise in regulatory governance, compliance, audit or financial services, would provide an appropriate model.

At a minimum:

15.1 The reviewer should have no material current financial, employment, consulting, governance or business relationship with CIRO, a Dealer Member, an industry association representing Dealer Members, or an Incorporated Approved Person.

15.2 CIRO should establish an appropriate look-back period for significant prior relationships that could reasonably call the reviewer's independence into question.

15.3 Before appointment, the reviewer should provide a written declaration identifying any past or present relationships that could reasonably be perceived as affecting independence.

15.4 CIRO should publicly disclose the reviewer's identity, professional qualifications, terms of reference and independence declaration when the appointment is made.

15.5 The reviewer should have unrestricted access to the information reasonably necessary to conduct the review, subject to applicable privacy and confidentiality requirements.

15.6 The final report should be signed personally by the responsible professional. The reviewer should therefore be accountable for the quality, objectivity and evidentiary basis of the report under the standards governing that person's profession.

15.7 CIRO management, Dealer Members, Incorporated Approved Persons and industry associations should have no authority to alter the reviewer's findings or conclusions. Any factual comments provided to the reviewer should be documented, and the final conclusions should remain those of the independent reviewer.

The purpose of these requirements is not to question the integrity of any particular individual or organization. It is to ensure that a review intended to provide public assurance is genuinely independent and is seen to be independent. Where the review concerns the effectiveness of a regulatory structure developed by CIRO and used by its regulated firms, the assessment should not be performed by persons whose professional or financial relationships could create an actual or reasonably perceived conflict of interest.

The review should not merely be commenced within three years.

A completed independent review, together with its findings and recommendations, should be published publicly no later than three years from the effective date of implementation.

The review should assess at least:

15.8 the number and characteristics of Incorporated Approved Persons;

15.9 whether incorporation has actually increased access to advice, particularly for lower-income and smaller-account investors;

15.10 changes in complaints involving incorporated advisors;

15.11 whether complaints take longer to resolve than comparable complaints involving non-incorporated advisors;

15.12 whether disputes have arisen over whether conduct was performed on behalf of the Dealer Member;

15.13 whether Dealer Members have attempted to allocate responsibility to advisor corporations in client disputes;

15.14 compliance and supervisory findings involving Incorporated Approved Persons;

15.15 insurance and recoverability issues;

15.16 instances in which corporate dissolution, insolvency, termination or movement between dealers affected a client's ability to obtain redress;

15.17 whether the one-Dealer-Member accountability structure has operated effectively without ambiguity or overlap; and

15.18 whether the investor-protection benefits and economic benefits relied upon in adopting the proposal have actually materialized.

The three-year deadline should apply to **publication of the completed report**, not merely appointment of a reviewer or commencement of the review.

If the review identifies material accountability gaps or adverse investor outcomes, CIRO and the Canadian Securities Administrators should commit to considering corrective amendments promptly.

16. Conclusion

Advisor incorporation may provide legitimate business advantages. Those advantages, however, accrue primarily to advisors and their businesses. The regulatory question for CIRO must remain whether the structure protects investors at least as effectively as the existing direct relationship.

Creating an additional corporation must not create an additional defence, an additional complaint stage, an additional insurance dispute, an additional opportunity to allocate responsibility elsewhere, or an additional delay before an investor obtains redress.

For that reason, the most important principles are simple:

There should be **one clearly identifiable Dealer Member** responsible for supervising each Incorporated Approved Person at any point in time.

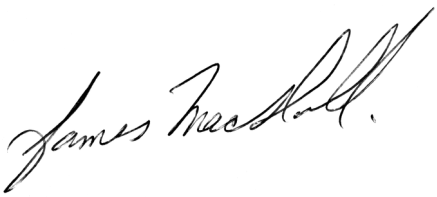
There should be **no concurrent sponsorship, no overlapping approval and no grey area** from which competing interpretations of responsibility could later arise.

The corporation should add an accountable party without removing or weakening any existing accountability of the individual or Dealer Member.

And CIRO should independently test the results after implementation, with a review conducted by a genuinely independent, professionally accountable person and the completed report made public **no later than the third anniversary of implementation**.

If these principles are incorporated into the final framework, advisor incorporation can be assessed as a business-structure reform without requiring Canadian investors to accept additional uncertainty concerning who is responsible when something goes wrong.

Yours truly,



James MacDonald, MBA
Former Professor, Centennial College (2009–2026)