IIACACCVM
INVESTMENT INDUSTRY ASSOCIATION OF CANADA
ASSOCIATION CANADIENNE DU COMMERCE DES VALEURS MOBILIÈRES

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Direction du secrétariat des commissions
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Dear Sir/Madam:

RE: AN ACT RESPECTING THE PROTECTION OF PERSONAL INFORMATION IN THE PRIVATE SECTOR (THE "ACT")

The Investment Industry Association of Canada (the "IIAC") writes to seek clarification on a number of provisions in the recently enacted Act.

The IIAC is the leading national association representing dealers who comprise the vast majority of the financial services provided to Canadian retail investors. Our members distribute a variety of securities such as mutual funds and other managed equity and fixed income funds and provide a diverse array of portfolio management, and advisory services. Several of our members also have dealers regulated by the Mutual Fund Dealers Association ("MFDA"). In servicing client accounts, our industry is responsible for safeguarding our clients' sensitive personal information, including the details of and access to their accounts and financial data.

Summary: In order to facilitate effective compliance with the recently enacted Act, IIAC member firms and other impacted organizations would benefit from clarification of a number of provisions articulated below.

The areas requiring clarification are noted below. We offer the following feedback in respect of guidance that may assist impacted organizations in ensuring the objectives of the legislation are met in an effective and efficient manner.

Section 3.2 – Clarification would be helpful on the scope and the content of the requirement to publish "detailed information" about a company's privacy governance policies and processes. Given the numerous ways in which personal information may be handled, the type of personal information, the activity to which it relates, the departments through which it flows, the persons with access and the different data flows, detailed information would be overwhelming to clients and it would likely not be possible to document the information in a comprehensive manner. The degree of detail that appears to be required may also potentially expose commercially sensitive information. Such information is also likely to be subject to frequent change as the data, staff positions, technology and internal processes shift. A robust privacy policy to inform clients of the use and protection of their data would provide the relevant information without overwhelming clients with overly-detailed and frequently changing information.

Section 3.8 – We seek confirmation that the register of confidentiality incidents is not a public document and will not be released to the public by the Commission.

Further clarification on the scope of a confidentiality incident would be helpful. It is not clear if **use of personal information without consent** would constitute a "confidentiality incident". For example, if a client requests not to receive marketing materials, and a firm mistakenly uses a client's personal information without consent for marketing purposes, would that use be interpreted as a "confidentiality incident"? If so, such an interpretation could greatly increase incident notifications to the Commission.

Section 8.1 – Clarification about how the requirement to inform a person about the "means available to activate the functions that allow a person to be identified, located or profiled" is intended to be operationalized would be helpful. It is not clear if this notice can be fulfilled by including a disclosure in the company's online privacy policy, or if specific and/or express consent is required to activate such functions. Further, if such functions are inherent in the services for which the person is seeking to receive, we question if any consent requirement would be subject to an exemption as per sections 12, 18.3 and 18.4.

Section 12.1 – The requirement for explicit and specific disclosure in respect of the use personal information to "render a decision based exclusively on automated processing" should be clarified to exclude decisions that may be categorized as recommendations and other matters that will not have a material effect on the individuals.

Section 17 – In respect of the communication of personal information outside Québec, we seek clarification that the requirement for a person carrying on an enterprise to conduct an assessment of the "legal framework applicable in the State" allows for an analysis that can be undertaken and relied upon for all such communication by a firm (subject to appropriate and periodic updating of the assessment). Ideally, consistent with the EU General Data Protection Regulation ("GDPR") context, the responsible regulator would undertake adequacy assessments to ensure consistent determinations of the acceptability of various jurisdictions, rather than require thousands of businesses to undertake the time and effort to perform the analysis for the same jurisdictions, and potentially arrive at different conclusions.

The IIAC seeks to facilitate the efficient implementation of this important legislation for our members and other stakeholders. We would be pleased to meet with you to discuss these matters, and other issues regarding implementation issues of concern to the investment industry.

Thank you for considering our comments.

Sincerely,

Investment Industry Association of Canada