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

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May 23, 2018

Charles Corlett
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Investment Industry Regulatory Organization of Canada
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Dear Sirs and Mesdames:

Re: Request for Comment – Enforcement Alterative Forms of Disciplinary Action

The Investment Industry Association of Canada[1] (the IIAC) appreciates the opportunity to comment on the Enforcement Alternative Forms of Disciplinary Action Proposals (the Proposals). We support the Investment Industry Regulatory Organization of Canada's (IIROC's) objective of improving operational and procedural efficiencies while ensuring that their regulatory response is appropriate and fair.

Minor Contravention Program (MCP)

1. *Do you believe that the proposed MCP would be useful?*

   While the IIAC appreciates IIROC's intent in the creation of the MCP, we do not believe that the MCP will be able to achieve IIROC's stated goals of ensuring a proportionate regulatory response for minor contraventions or of facilitating better use of resources and reducing costs for both IIROC and Dealer Members. IIAC Members do not believe IIROC Dealer Members or Approved Persons are likely to voluntarily choose to accept the MCP. There are a number of elements of the MCP that will limit its utility.

   One of the key features of the MCP is an admission that the Approved Person or Dealer Member contravened IIROC rules. This aspect of the MCP will make it unlikely to be an accepted option for Approved Persons or Dealer Members. While IIROC has stated that the MCP admission would not constitute a formal disciplinary record and would therefore not be a part of the individual's disciplinary record, it can still negatively impact the Approved Person professionally. There is

[1] The IIAC is the national association representing the investment industry's position on securities regulation, public policy and industry issues on behalf of our 122 IIROC-regulated investment dealer members in the Canadian securities industry. These dealer firms are the key intermediaries in the Canadian capital markets, accounting for the vast majority of financial advisory services, securities trading and underwriting in the public and private markets for government and corporations. For more information visit, http://www.iiac.ca

uncertainty regarding how various other regulators, academic and professional associations would treat an admission under the MCP. Although the acceptance of the MCP is anonymous to the general public, it is not clear what reporting either self-reporting or pursuant to other rules may be required. For example, the CSA's Form 33-109F4 for registration of Individuals and Permitted Individuals requires individuals to disclose whether they have been subject to disciplinary proceedings conducted by any self-regulatory organization. Without details in differentiating between a MCP acceptance with other disciplinary proceedings, it could impact the Approved Person's future employment. Dealer Members also have to complete forms when an Approved Person is terminated or resigns and the current wording would require the MCP acceptance to be disclosed.

With respect to external memberships in societies like the Chartered Financial Analyst society or the Financial Planning Standards Council, disclosure of an MCP acceptance may be required which could jeopardize the Approved Person's membership. Those designations are very important to an Approved Person's employment and business. There are further concerns relating to how an MCP acceptance could be used in civil cases and potentially form part of the court record.

IIAC members are also concerned that the MCP may in fact elevate very minor issues that currently are addressed through internal discipline processes and/or cautionary letters. Based on the criteria outlined in the Notice, we do not believe it would divert cases that would have otherwise progressed to a full disciplinary panel. As a result, the participation in MCP could require more resources being used to examine minor rule contraventions.

Finally, it is likely that an Approved Person or Dealer Member would need to retain legal counsel. This would result in significant costs for participation in the MCP program.

Rather, for truly minor contraventions based on the criteria outlined in 1.6 of the Notice, such as contraventions where there is little to no harm to clients, or the contravention was technical or inadvertent in nature (and the need for deterrence is therefore lessened), we believe that the Dealer Member's internal discipline process is generally sufficient. IIROC has stated that internal discipline is to be encouraged to effectively address the conduct of Dealer Member employees and to encourage and foster a culture of compliance. IIROC Panels typically consider internal discipline during a full disciplinary hearing when considering sanctions, we believe the fullness of the Dealer Member investigation and the sanctions imposed should be taken into account and in case of minor contraventions, will generally be sufficient.

Most Dealer Members have robust internal disciplinary processes. Firms conduct comprehensive investigations, and can impose a range of sanctions tailored to the individual situation. Dealer Members look to the IIROC Sanction Guidelines and IIROC Hearings to determine the appropriate sanctions for Approved Persons. Investor advocates were concerned that MCP does not address client loss or client protection. Rule 2500B outlines the process for Dealer Members to respond to client complaints and the internal discipline complements how a Dealer Member provides client redress. Internal discipline can include a component of client compensation for losses where warranted by the circumstances, as well as additional sanctions on the Approved Person such as a fine, education requirements, or supervision requirements. A client could also seek redress through the Ombudsman

for Banking Services and Investments (OBSI) in parallel to the Dealer Member going through its own process, with OBSI having the ability to recommend compensation for the client. Internal discipline can be very flexible and responsive to unique circumstances that arise. Further, there is transparency with the regulators as internal discipline is reported to IIROC in accordance with Rule 3100.

If IIROC believes that internal discipline in a particular circumstance is not sufficient, it can still open an investigation. During IIROC's Business Conduct audits, Dealer Members are often asked for samples of their investigation files and IIROC can provide feedback on a firm's processes.

Proper recognition of the role that Dealer Member internal discipline can play for enforcement of minor contraventions will free up resources for IIROC to pursue more serious matters.

Questions 2-6

As a result of our response to Question 1, we did not answer the remaining questions in this section.

Early Resolution Offers

1. *Do you believe that the Early Resolution Offers initiative is necessary? Will it meet its objective?*

Disciplinary hearings are very disruptive to Approved Persons, Dealer Members, clients and IIROC. The ability to resolve cases earlier in the process is welcomed by the industry. We understand that IIROC could instruct their Staff to implement early resolution offers now. However, we appreciate that IIROC is soliciting feedback as to how they can implement these offers in a transparent way for all participants and the public to understand what credit is provided as a result of an Early Offer Resolution.

We also support IIROC's objective of resolving matters, where possible, earlier in the process to minimize the costs associated with full investigations and to reduce the significant Dealer Member resources spent responding to document and other information requests. Early Resolution Offers would be most beneficial if they were discussed at an early enough stage that allow Dealer Members to avoid the burden of responding to these requests.

While we understand that IIROC anticipates that an Early Resolution Offer will be a one-time offer, we would expect that if new information is learned during the course of the investigation, that IIROC would have discretion to revisit an early settlement offer and base a new offer on the facts rather than be boxed in to an amount that is not proportionate given the newly acquired information.

2. *How can Staff best demonstrate the credit given for accepting an Early Resolution Offer?*

IIAC Members support developing a transparent methodology to provide credit for acceptance of an early resolution offer. We believe more research and discussion with IIROC Staff is required before industry can provide an exact suggestion as to what is an appropriate way IIROC Staff can best demonstrate the credit given. We also believe there needs to be flexibility in the program to ensure

settlement offers can respond to changes in information. If a Dealer Member or Approved Person rejects an offer because they believe new information will be revealed in the investigation that can mitigate certain factors, that needs to be considered. If there is another settlement opportunity, that offer should be reflective of the facts.

3. *To what extent should Staff factor internal discipline into the decision to make an Early Resolution Offer?*

   The IIAC has repeatedly emphasized the importance of recognizing internal discipline. We believe it would be appropriate to consider internal discipline when considering whether or not a matter is eligible for an Early Resolution Offer and what sanctions will be proposed. Internal discipline is factored in the quantum of sanctions for IIROC disciplinary panels and we would expect it to impact the Early Resolution Offers as well. As we highlighted above, Dealer Members have robust investigations, and their internal sanctions are based on the IIROC Sanction Guidelines, as well as IIROC hearing decisions.

If you have any questions with respect to the foregoing, we kindly ask that you contact the undersigned at **awalrath@iiac.ca** or 416-687-5472. Thank you.

Yours sincerely,

"Adrian Walrath"

Adrian Walrath
Assistant Director
Investment Industry Association of Canada