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### Request for Comment Minor Contravention Program (MCP) and Early Resolution Offers (ERO) Initiative

[https://www.osc.gov.on.ca/documents/en/Marketplaces/iiroc\\_20190425\\_notice-rfc-minor-contravention-program.pdf](https://www.osc.gov.on.ca/documents/en/Marketplaces/iiroc_20190425_notice-rfc-minor-contravention-program.pdf)

I will gladly provide a response but I must say the issue of coming to a settlement faster is not a real priority for Main Street. I'd like to see some meaningful IIROC enforcement actions that send a message to the industry- follow the rules or pay the price. It is only by establishing accountability can we expect the Canadian advice industry to mend its ways. Going easier on the industry such as proposed by the ERO program will not reinforce accountability. It might actually be counterproductive to regulatory objectives.

The recent scandal by virtually all major IIROC Member firms regarding double billing and overcharging is an example of an industry that needs some tough love.

The industry-wide overcharging of investors is a huge failure for IIROC oversight. Overall, including the settlements involving overcharging, the no-contest settlement program has been used to resolve over 15 cases, resulting in over \$350 million being returned to investors collectively. Every major IIROC regulated investment dealer overcharged tens of thousands of their clients. How did so many dealer supervisory controls fail and their failure remain undetected by IIROC, some dating back to 2000? See table below:

Significant "no contest" settlements related to overcharging clients on fees							
COMPANIES AFFILIATED WITH:	OVER-CHARGING OCCURRED	DATE OF SELF-REPORTING TO THE OSC	"NO CONTEST" SETTLEMENT DATE	NO. OF CLIENTS AFFECTED	EST. CLIENT COMPENSATION DUE	VOLUNTARY PAYMENT (INCL. COSTS)	PAYMENT AS % OF CLIENT COMP.
Toronto-Dominion Bank	2000-14	May 2014	Nov. 13, 2014	10,520	\$13,500,000	\$650,000	4.8
Bank of Nova Scotia	2008-15	Feb. 2015	July 29, 2016	45,703	\$19,997,821	\$850,000	4.3
Canadian Imperial Bank of Commerce	2002-16	March 2015	Oct. 28, 2016	81,755	\$73,260,104	\$3,050,000	4.2
Bank of Montreal	2008-16	Feb. 2015	Dec. 15, 2016	60,393	\$49,885,661	\$2,190,000	4.4
Royal Bank of Canada	2005-16	Feb. 2015	June 27, 2017	50,447	\$21,802,231	\$975,000	4.5
Manulife Financial Corp.	2005-16	June 2015	July 13, 2017	9,420	\$11,700,000	\$520,000	4.4

SOURCE: INVESTMENT EXECUTIVE RESEARCH

INVESTMENT EXECUTIVE CHART

Source: <http://www.investmentexecutive.com/-/osc-firms-focus-on->

## overcharging

For whatever reason, the OSC took over the IIROC cases and ended up with no-contest settlements with minimal fines but at least investors got some of their life savings back. Settlements need to be much harsher if the industry is ever going to respect regulators , improve processes and embrace regulatory reform.

The IIROC Board should be spending their time with Staff trying to find out why the oversight system failed so badly for so long without detection and fix it. That would have material impact.

The MCP initiative would allow an individual "advisor" who caused "limited" harm to clients to remain anonymous. Why on earth would the IIROC Board think that is in the Public interest? In all conscience, I could never agree to such a devilish arrangement. I sure hope that provincial securities regulators do not allow such a thing. They have done enough damage by allowing embedded commissions to breathe and walking away from a Best interests standard. Enough is enough.

As to the ERO Program ,I cannot say whether the 30% discount off a quasi arbitrary number is sound regulation. From an outsider's view it looks like capitulation in the face of fierce industry resistance. If IIROC has some independent academic research that the proposed process will be effective it should be made available to commenters. The absence of any figures or data prevents any real analysis. Will ERO lead to improved corporate culture improved systems? Without any evidence or even a theory, it is impossible for me to support the ERO program.

One thing is certain, the cases reaching Hearing Panels and the fines imposed are nothing more than nuisances to industry participants. Take the recent Preston Smith case. He garnered \$\$1,136,928.00 in commissions but has to pay only a \$100K fine. No disgorgement is being applied. The root cause of this disastrous case is the dealer who failed to address all sorts of monkey business and took no action over an extended period of time. The real culprit here is the Dealer whose supervisory practices appear to be deficient. Unless they are also prosecuted, they could end up keeping their piece of the toxic commissions generated via wrongdoing. Can IIROC claim that this enforcement action will lead to an improvement in the "system"? The Board of Directors should prioritize its attention to the significant few and away from the trivial many.

I do not believe that the two tools expounded here will make any material difference to investor protection whatsoever. The consultation is a diversion away from facing the tougher strategic enforcement issues facing IIROC and its credibility as an SRO.

In conclusion, I cannot recommend that these proposals be approved by the Board or the CSA jurisdictions

Art Ross