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Delivered by Email - *ccorlett@iiroc.ca*

Charles Corlett
Director, Enforcement Litigation
Investment Industry Regulatory Organization of Canada
121 King Street West, Suite 2000
Toronto, ON M5H 3T9

Dear Mr. Corlett,

Re: IIROC Notice 19-0076: Minor Contraventions Program and Early Resolution Offers Proposal

Thank you for your efforts to review and consider manners in which efficiency of the enforcement process may be enhanced. We are pleased to provide our comments on these proposals. Our comments are those of individual lawyers in the Securities Litigation practice groups of BLG and do not necessarily represent the views of the BLG, other lawyers or our clients.

We are motivated to respond to the proposal as a result of our role as legal advisors including as litigation counsel to IIROC members. We are familiar and experienced with IIROC rules and process and work closely with IIROC, along with our regulatory bodies, and our clients in reaching outcomes with regard to the public interest.

Minor Contravention Policy

1.1 Purpose and 1.5 Criteria for Minor Contravention Agreements

The intended use that will be made of this program remains unclear. In particular, it remains unclear why a cautionary letter would not be appropriate where formal disciplinary proceedings are not warranted. With regard to the benefits of regulatory burden reduction, the criteria listed for Minor Contravention Agreement militate against any IIROC discipline. Isolated, technical, unintentional, inadvertent incidents resulting in limited to no harm to the market or client or benefit to the Approved Person and conduct that has already been subject to internal discipline, corrected, remedied or compensated for should not be subject to fine.

Should a program proceed, the one-member panel should consider the above criteria to conclude that no fine should be payable and order the matter closed, subject to cautionary letter or order that a further or revised MCP agreement may be acceptable.

1.2 Proposal

Various questions arise as to the scope and purpose of the proposal. For example, though Proposal states that internal discipline will be considered, it could more clearly state that where appropriate internal discipline has taken place, further IIROC discipline is unnecessary. Other questions and issues which arise are explored further below.

1.4 Key Features

1.4.1 MCP Notice

IIROC Notice 19-00076 (the "IIROC Notice") states that Staff would provide a Minor Contravention Notice (MCP Notice) which contains a summary of the relevant facts and a prescribed amount of time to agree to its terms. The aforementioned implies that solely Staff determine the contents of the MCP notice.

The following question arise:

What if relevant facts have, in the view of the Approved Person, have been omitted from the Notice?

This question may be resolved with the proposed revision to Rule 8200 outlined in this correspondence.

1.4.2 Agreement

IIROC Notice 19-00076 states that by agreeing to the MCP Notice, the Approved Person would admit to contravening the specific IIROC requirements and would submit an MCP Agreement for acceptance by a one-member Panel.

The following questions and considerations arise:

i) How does the MCP Agreement differ from the MCP Notice? Is the Notice representative of a decision by IIROC Staff, as communicated to the Respondent, to attempt to resolve the matter via an MCP Agreement? Would the MCP Agreement be the sole document presented to the Hearing Panel for approval?

   We presume the MCP Agreement will include more facts than the Notice but this is unclear.

ii) Again, what if relevant facts have, in the view of the Approved Person, have been omitted from the Notice?

   The Approved Person should have input into the contents of the MCP Agreement because it (and possibly the MCP Notice) appear to be the only document that is being contemplated to be put before the one-member panel and other SROs and the CSA are contemplated as having access to "MCP information" (the contents of

which are not specifically defined in the IIROC Notice). We are assuming that this access will be in the same manner as with caution or warning letters.

iii) Assuming the Approved Person properly has input into the contents of the MCP Agreement, what mechanisms for resolution exist if Staff and the Approved Person cannot agree on the factual contents of the MCP Agreement?

As currently drafted, presumably IIROC Staff may elect to close the matter, issue a caution/warning letter or proceed with a more formal enforcement process, the vast majority of which are resolved by settlement agreement.

There should be rule revision whereby at any time prior to the commencement of any proceeding under Rule 8200 a party may request a confidential attendance before a panel member to consider:

a) The settlement of any or all of the issues;
b) The simplification of the issues;
c) Facts that may be agreed upon;
d) Any other matter that may further a just, expeditious and cost effective disposition of an investigation.

A panel member should otherwise be available at the request of either party at any stage of an investigation or negotiation to preside over this confidential attendance.

The aforementioned amendment would seek to enhance the MCP and Early Resolution Proposals along with IIROC's other processes. It would provide an independent review of Staff's exercise of discretion with respect to any of the proposedMCP, Early Resolution Offers, investigations and settlement negotiations.

1.4.3 Hearing Panel Decision

Settlement hearings including those subject to any MCP program are disciplinary in nature and should be consistently considered as disciplinary hearings in any rule amendments.

Attendance by the parties would be helpful to the Panel member who may have questions that are not addressed by the MCP Information.

Should a program proceed, at a minimum, oral reasons should be provided which may be transcribed and available to the parties, to a panel member at the confidential attendance suggested by proposed Rule 8200 amendment or to a subsequent hearing panel. The reasons for any rejection would be of benefit to all and assist with the efficiency of the program and any future process .

Early Resolution Offers

2.1 Background

As a matter of practice, discussions regarding a settlement agreement are currently unfruitful until Staff has determined an investigation is complete and obtained instructions internally. Investigations are invariably fulsome.

In addition to and apart from fine, the accuracy of the factual admissions sought, their relevance and materiality are the subject of settlement discussion. There is currently no formal means available to guide and assist in those discussions when either party is of the view that such would be of benefit. Please see comments regarding proposed amendment to Rule 8200 to resolve this issue.

2.2 Purpose

The IIROC Notice states that an Early Resolution offer would constitute Staff's best offer by granting a reduction of 30% on the sanctions Staff would otherwise seek in a settlement agreement.

The following questions arise:

i) How a 30% reduction is objectively determined and valued? The sanctions that Staff would otherwise seek may not be within ranges determined by a Panel or Respondent's counsel based on comparable facts or following a contested hearing. Please see comments regarding proposed amendment to Rule 8200 to resolve this issue.

ii) Settlement discussions and negotiations are conducted on a without prejudice and confidential basis for many positive policy reasons. The 'amount of credit' forming part of the settlement agreement as is suggested in the IIROC Notice, raises the further concern that fines the Approved Person or Dealer may otherwise correctly determine as objectionable form part of a permanent public record.

2.3 Process and Key Features

An Early Resolution offer , if not accepted, should not have a chilling effect on subsequent settlement discussions on more appropriate terms.

2.4 Criteria for Making an Early Resolution Offer

The following criteria are of concern:

4. Where there are client losses, compensation must be paid;

5. Where there has been a financial benefit, the full amount of the profit or loss avoided must be disgorged;

6. In the case of individuals, whether they have been internally disciplined.

Items 4 and 5 are dependant upon the particular facts and circumstances so that their appropriateness varies in any given circumstance.

As previously stated, where the matter has been the subject of appropriate internal discipline, further IIROC sanction is unnecessary.

Please feel free to contact us if you would like further elaboration of our comments. We would be pleased to meet with you at your convenience to discuss any of the concepts covered in the proposals.

Yours very truly,

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