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

The consultation was flawed from the beginning. The benchmarking was inadequate and was not really used in the Policy formulation. The decision to use an online investor survey for such a critical issue as enforcement was ill- conceived. This was further aggravated by an IIROC News release proclaiming investor support for MCP and ERO. "National Survey: *Investors Support Proposed IIROC Enforcement Alternatives Canadians favour flexible, proportionate approach to discipline"*. IIROC was well aware at the time that seasoned investor advocates did not support the proposals. The splashy headline was perceived as a PR ploy to garner CSA support for the controversial proposals. [when detailed responses are reviewed, it turns out that responders were lukewarm at best and in fact just one seventh (14%) of investors were **very supportive** for IIROC introducing flexibility for cases involving minor breaches that have little impact on investors.

As I look at this Consultation Paper, I see a self- regulator focussed on holding individuals accountable for what are described as "minor contraventions", so minor apparently, that is not necessary to inform the impacted clients or the public at large of the contraventions. Why even divert scarce resources to such cases? Based on published stats, there are very few Cautionary letters issued each year so it's not clear why this special enforcement tool is justified (for Reps there were only 7 in 2016 just 1 in 2017 and in 2018, there were just 9).

Strangely, the consultation never provides illustrative examples of what IIROC considers minor or how many MCP cases are expected annually. I also note that of the Comment letters posted so far, not a single one supports the proposals. In particular, Kenmar Associates and the IAP from the Ontario Securities Commission take exception to the proposals. I say, provide better rationale or with-draw the MCP consultation and make changes.

The ERO situation is similar. It comes across as a last ditch attempt from IIROC to achieve a negotiated settlement to speed up the enforcement process. It is not explained why the principles- based sanction guidelines do not have sufficient

flexibility. As a retail investor, the perception is of such weak enforcement capability that a 30% capitulation is necessary. The 30% is a fixed number so it not even scaleable to fit differing situations. Basic negotiating theory suggests that the average settlement will be reduced by 30% over time. I expect Member firms will fully support this proposal and be thankful to IIROC for proposing it. Investors will not. The total dollars of annual monetary penalties levied on firms in this trillion dollar plus advice industry is farcical ($915, 500) .Does anyone really believe there is an ounce of deterrence achieved by the ultra modest fines levied?

Here is an idea that will definitely lead to deterrence. IIROC provides an opportunity for internal bank "ombudsman" to divert client complaints to fake internal bank "ombudsman" of its Members. In Rule 2500B, you state: "Dealer Members must respond to client complaints as soon as possible and no later than ninety (90) calendar days from the date of receipt by the firm. The ninety (90) days timeline must include all internal processes (with the exception of any internal ombudsman processes offered by an affiliate of the firm) of the Dealer Member that are made available to the client." This provision is clearly for the benefit of bank-owned IIROC Member firms but is undeniably harmful to retail investors. If IIROC is truly interested in investor protection, it is my view that simply removing this exemption will do much more for retail investor protection than both of these controversial proposals combined will ever do. [NOTE: ***" the internal ombudsman is employed by the firm or is an affiliate of the firm and, unlike OBSI, is not an independent dispute resolution service****";* https://www.iiroc.ca/Documents/2017/8c4af3b6-65f5-464c-bd3c-3b9ffb5c2979_en.pdf#search=IIROC%20Notice%2017%2D0229%2C]

When Dealing representatives (aka "advisors") breach their duty to clients by misleading, mis-selling and overcharging them, Canadians expect that IIROC will craft a package of remedies that will compensate harmed investors, provide additional safeguards for prospective investors, and deter similar conduct by the Rep and other Reps. That being said, it is the duty of the Member firm to put robust systems and controls in place to prevent and/or promptly detect such breaches. The contractual relationship is between the Member firm and the client and so Member firms must always be held accountable by IIROC for the recommendations and activities of their representatives.

In conclusion, I join fellow commenters in rejecting these proposals. I believe IIROC should focus on (a) enhanced enforcement of firms and focus on significant issues, (b) increased emphasis on investor restitution, (c) increased proficiency standards for Representatives and (d) improvement in the standards of conduct in the wealth management industry. There should also be more collaboration and follow-through with law enforcement when criminal activity is detected.

The retirement savings of Canadians depend on IIROC's laser focus on protecting investors and enforcing its rules. It should not be constrained by arbitrary budgetary constraints or a belligerent advice industry.

David Palk