May 7, 2019

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

Market Regulation Ontario Securities Commission
Suite 1903, Box 55 20 Queen Street West
Toronto, Ontario M5H 3S8
e-mail: marketregulation@osc.gov.on.ca

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

I greatly appreciate the chance to let my voice be heard on these proposed enforcement tools. I expect commenting on this is a waste of time since IIROC appears to have made up its mind. But here goes anyways.

The IIROC Board of directors has declared these proposals as being in the Public interest. If they received the same limited information that is revealed in the consultation, we do not see how they could possibly do that. Secondly, the benchmarking is atrocious. Maybe more retail investor protection expertise on the Board would increase IIROC credibility.

IIROC have a history of anti- investor initiatives. For example, back in 2014/15, IIROC released a proposal that would have allowed Registered Representatives to act as executors and trustees for clients, a practice long prohibited by the MFDA. A Oct. 2015 comment letter from the Small Investor Protection Association condemned the proposal by pointing out all the risks to retail investors of such a practice http://www.sipa.ca/library/SIPAsubmissions/500%20OSC%20Greenglass%20-%20SIPA%20Comments%20re%20Executors%20201510.pdf The OSC Investor Advisory Panel did not support the proposal either http://www.osc.gov.on.ca/documents/en/Investors/20150831_members-dealers-rule.pdf After other consumer groups jumped in and industry reaction was muted, IIROC withdrew the controversial proposal.

More recently in 2016-2017, IIROC proposed Guidance that would have adversely impacted DIY investors and online dealers. FAIR Canada, SIPA, Kenmar and other consumer groups vigorously opposed the attempt to unduly constrain the many positive features and offerings of discount brokers. Even the industry trade Association IIAC took strong exception to nearly all of the proposals - "**We feel the existing disclosures are clear: The client controls the investment decisions,**

OEO firms are not providing recommendations. The Guidance is not protecting, nor helping, the investor."
https://iiac.ca/wp-content/uploads/IIAC-Response-to-IIROCs-Order-Execution-Only-Guidance.pdf With minor changes, the Guidance was issued anyways. Fortunately, it has not been turned into a Rule. The point here is that IIIROC issued a controversial proposal based on an investor survey they refused to disclose and did not perform a cost- benefit or impact analysis for its effect on retail investors. Such behaviour can hardly be said to be in the Public interest.

A research report by Professor Mark Lokanan *An* ***update on self-regulation in the Canadian securities industry (2009-2016): funnel in, funnel out, and funnel away*** made this statement:
"…a significant proportion of complaints were "funneled out" at the investigation and prosecution stages of the enforcement process. As was evident in Figure 4, investigation only received 13% of the cases that came through IIROC's reporting system and only 3% made their way through to prosecution. These findings imply that about 97% of the cases were "funneled out" by the time they reached prosecution. The funneling out of cases before they reach a hearing panel gives the appearance of lenient enforcement and sends the wrong message about IIROC's seriousness to protect the public interest (Johnson, 2017)." Pg 26
https://viurrspace.ca/bitstream/handle/10613/6069/IIROC_Funnel_Study_JFRC.pdf?sequence=5&isAllowed=y

IIROC do not hold its Members to account very often and when they do the fines are nothing more than mosquito bites at best. IIROC should examine its own system of enforcement and explain why so few complaints it receives are investigated and prosecuted. Investors perceive this lack of enforcement as a shield for its Members.

As to MCP, I just cannot understand why an employee who makes an inadvertent error or honest minor mistake cannot be handled by dealer supervision and the HR dept. Effective guidance and coaching can ensure the employee is motivated to improve. If the customer suffered any loss, a simple correction should be implemented. Fining someone for an honest mistake is likely to be a demotivator. Surely, IIROC has bigger fish to fry, like taking on the bank-owned discount brokers who have sold clients A series mutual funds for more than a decade. I have heard estimates topping $150M per annum in overcharging. Investors have been forced to initiate Class Actions because IIROC has not provided the needed enforcement.

The MFDA deals with such minor contraventions using a Caution Letter. More serious breaches are dealt with a Warning letter. Why not harmonize with them? Is an MCP really cost-effective and a robust deterrent? Is a cost-benefit analysis available?

A National Investor Survey https://www.newswire.ca/news-releases/national-survey-investors-support-proposed-iiroc-enforcement-alternatives-700044271.html found that more than half of respondents believed that IIROC should publish the names of firms or individuals in all cases of rule breaches, including minor violations

yet this proposal retains Rep anonymity. I view any attempt to institutionalize anonymity regarding breaches with deep concern. Transparency of sanctions is paramount.

As for the ERO initiative, why can't that just be handled by the so-called principles-based sanction guidelines IIROC lobbied so hard for? Follow the principles and apply the appropriate fine. Why all the extensive negotiation if IIROC has evidence of wrongdoing? An unsolicited offer of 30% (a fixed number) fine reduction just to move a case along violates core principles of justice. It also sends the wrong message to Main Street and to Main Street. IIROC must regulate, make sanction decisions and spend less time haggling with its dues-paying Members.

If IIROC is really interested in fairness it should bring its dealer complaint handling rules into the 20th century. It should also deal harshly with dealers who low- ball or reject OBSI monetary compensation recommendations. That would be real investor protection.

I also note that each time a registered Representative is fined, very often the client abuse has been going on for some time and/or with multiple clients. Supervision is obviously deficient. In some cases, supervision earns a bonus based solely on sales production by those she/he supervises, creating a definitive conflict-of-interest. When a Rep is ordered to disgorge his/her share of sales commissions, why (a) isn't the Dealer also required to give up their share of the improperly received commission and (b) why isn't the dealer sanctioned for negligent supervision and compliance? I trust all monies disgorged will be returned to the victim(s).

Since dealer incentive programs and sales quotas are the primary causes of Rep wrongdoing, why not resolve to fix the flimsy foundations of contemporary personalized financial advice?

When you consider the numerically small enforcement numbers and dollars involved, this consultation seems like much ado about nothing.

I simply cannot see how these proposals will improve investor protection for Canadians. On a Top 10 list of investor advocacy priorities this would be number 25 at best. According to the IIROC Investor Survey, just 22% of participants would have increased confidence to invest through Canadian markets if the regulatory changes were made. Why not listen to retail investors and investor advocates?

I urge the IIROC to step up its regulation related to the protection of seniors and vulnerable investors. So far, all that has been done is to offer general guidance and statements of encouragement.
http://www.iiroc.ca/Documents/2016/87c0e6d5-8054-4e88-9b56-9a079b8c35aa_en.pdf That should be a top priority for the Board.

I agree to web posting of my Comment letter.

I hope this feedback is useful to you in your deliberations.

David Fieldstone