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RE: IIROC Notice 19-0076 Minor Contravention Program and Early Resolution Offers

Dear Mr. Corlett,

I wish to offer some comments on these proposals. I do not support them because they are not in the best interest of Canadian investors. I particularly emphasise the objections raised by Stan Buell on behalf of the Small Investor Protection Association, and Emanno Pascutto on behalf of FAIR. I wish to emphasise some specific issues myself.

I do not agree that an MCP is appropriate if there has been any harm occurring to clients or markets, and in any case you do not define "limited or no harm." In my opinion, if any harm has occurred or may have occurred, a full hearing is required. Here is the passage to which I refer:

> 1.6 Types of Contraventions
>
> MCP Notices will be issued for contraventions of IIROC requirements that are isolated and
> result in limited or no harm to the public and the capital markets.
> Staff will consider the following criteria in making a determination about whether a contravention
> of IIROC requirements may be resolved by way of a MCP Notice:
> 1. the contravention is technical;
> 2. the contravention is an isolated incident;
> 3. the contravention resulted in:
> • limited or no harm to clients or other market participants;
> • limited or no harm to market integrity or the reputation of the
> marketplace;

> • limited or no benefit to the firm or individual engaged in the conduct or any related parties; and
> 4. the conduct was unintentional or inadvertent.

I also question whether you can reliably determine if the contravention is isolated and/or was inadvertent or unintentional. A system that allows "unintentional" breaches of what are already horribly inadequate rules protecting investors is a system that needs to be held accountable much more strictly than an MCP would accomplish.

I totally reject the proposal that MCPs should remain undisclosed. The public has a right to this information when determining who would be a suitable adviser.

At the end of the notice you wrote a chilling sentence that reveals the motivation of IIROC is not protection of investors, but rather protection of the investment industry from proper regulation. The passage I refer to is this:

> 3.3 Other Considerations
>
> 1. Are there other initiatives or programs that Staff should consider in order to provide more flexibility and options in addressing breaches of regulatory requirements in a fair and proportionate manner?

The regulations and limitations on the behaviour of investment advisers are already so weak that asking for more flexibility is simply code for: "How can we keep out of their way while they continue to take advantage of the huge power imbalance that already benefits the financial institutions at the expense of their clients."

I have already recommended you take to heart the comment letters from SIPA and FAIR. Let me bring up two specific statements in their letters that I think are very important.

SIPA's letter says:

> Real regulatory reform would require IIROC driving for a Fiduciary Standard for all representatives providing personalized financial advice. Tinkering with new disciplinary tools will do nothing for retail investor protection.

I agree totally. I am a CFP, bound by a code of ethics the places the client interests first. Just this morning I was discussing ethical issues with one of the leading figures in Canadian financial planning. We agree that not only is a fiduciary or client first standard in the best interest of individual investors, it is also in the best interest of the financial institutions in the long run. I suggest you read the recent Royal Commission on Banking in Australia reports and ask yourself how well the investment industry would fare if such a commission occurred in Canada.

A huge weakness in current regulation in Canada, particularly in IIROC's behaviour, is the failure to compensate investors for losses due to bad behaviour by advisers. I agree with FAIR's letter:

> 4. FAIR Canada repeats its opposition to the ERO Staff Policy Statement in so much as it permits a discounted sanction in circumstances where there is not full disgorgement of any profits made and full compensation paid to investors for any losses, including interest and fees incurred. It should be a condition requisite for eligibility for resolution of a rule contravention by either MCP or ERO that any client harmed by the rule contravention has received full compensation for loss and that any commissions or fees incurred have been repaid to the client.

IIROC may not consider academics as suitable persons to comment on market regulation. My experience is far broader than most finance academics and I make my comments from a position of substantial understanding. I have been an active investor in Canadian equities for 45 years and have for the past 25 never had less than $1 million in Canadian equities. I have been writing textbooks, doing rigorous research in personal finance topics and teaching personal finance for almost 35 years. I have been an expert witness in various court cases and regulatory hearings in finance and accounting for 30 years. For about the last 15 years this expert work has concentrated mostly on cases involving bad behaviour by investment advisers: unsuitable portfolios, fraud, theft, and downright stupidity. FP Canada honoured me as one of its inaugural Fellows in 2011 for my contribution to the field of financial planning in Canada.

I am writing about my opposition to two specific small proposals for changes in IIROC regulation. But my concerns are much broader than that.

Yours truly,

Chris Robinson

Professor of Finance and Finance Area Co-ordinator
Fellow of FP Canada
Sent by email