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I appreciate the opportunity to provide an input to the above-captioned request for comment ("Proposal").

Minor Contraventions Program (MCP)

I have only two issues with the MCP. The first deals with investor harm- reparation should be mandatory. The second relates to secrecy- if a sanction is more serious than a Cautionary letter, it should be made public. Secrecy would not be in the Public interest.

While I agree a form of "Small Claims Court" makes sense for "minor contraventions" I do not think unintentional or inadvertent errors should result in a fine especially if the error has been expeditiously and voluntarily rectified.

Know Your Client (KYC) is at the heart of advice giving so if it is out of date, supervision is compromised. If the risk profile of a client changes, a broker should update the KYC form and have the client review and sign off .If the risk tolerance is not formally updated I would consider that more than a minor issue especially if it involved multiple clients and/or seniors/retirees. An obsolete KYC could also cause problems if a complaint is filed. IIROC needs to ensure that breaches involving core advice documents are not treated as minor administrative oversights ("it's just the paperwork") - it should foster professional discipline.

It should be noted that the root cause of contraventions may be assignable to the Member. A few years ago I recall that leveraged and inverse ETF's were mis-sold because Member firms did not properly train and/ or supervise brokers in selling these complex products. Such cases are

technically the fault of the individual but should an individual pay IIROC $5K (after tax) because of Member management training shortcomings? It is the Member that should be held accountable for unsuitable recommendations/ lax supervision and investor redress if client losses are incurred in such cases. Holding Members accountable would motivate corrective action by the Member firm to prevent recurrence and enhance general deterrence.

Early Resolution Offers (ERO)

The Consultation states “Staff would consider the application of the following criteria in determining whether to make an Early Resolution Offer: where there are clients losses, compensation must be paid. “. This appears to be a positive but I have several questions on the meaning of the word “compensation”. Is it limited to investment losses or does it mean making clients whole? Does “compensation” include opportunity costs? Does it include commissions paid, fees, taxes and other expenses incurred by victims of rule breaches? Does it include the cost of unwinding of certain transactions e.g. DSC early redemption penalties or undue leveraging? Does it apply to all clients or just those who filed formal complaints? How would IIROC manage this?

The proposed text “would consider” needs clarification. I understand it to mean that IIROC would NOT even consider ERO if all impacted clients were not made whole. If my assumption is incorrect, than I cannot support ERO at all.

If it is discovered that a Member firm has been over-charging clients for each trade (or an account) over an extended period of time, I question whether a discount should apply, even if self-reported. This would mean that there was a complete breakdown in internal controls, management oversight and audit effectiveness that went undetected. In fact, one could argue that this is a case of gross negligence justifying an enhanced fine.

I am no expert on sanctions but I am disturbed to read that the law, rules, published sanction guidelines and an IIROC investigation are subject to “extensive negotiation” with Member firms. This means that IIROC Staff must be skilled negotiators for justice to be served. This is unsettling to me as a retail investor depending on IIROC for protection.

I cannot responsibly comment on the flat 30% fine reduction figure but I can comment that there does not appear to be corresponding enforcement tools where Member firms exploit elderly investors, low-ball complaint losses, or have utilized a systemic plan of financial abuse.

Should IIROC not have an enforcement tool that allows a fine to be increased by 30% (or more) on the sanctions Staff would otherwise seek in a settlement agreement when the Member has exhibited outrageous behaviour? Should there not be a range 0-30% instead of a fixed number to ensure fairness/proportionality?

An Alternative idea- enhanced whistleblowing program

A possible alternative to these proposals would be an enhanced whistleblowing program involving compensation. Rules which encourage whistleblowing and voluntary information reporting would likely enhance enforcement activity by providing IIROC with more information that could facilitate shortened investigations and reduce negotiations. Such rules would also encourage compliance and deter misconduct by increasing the probability that securities violations will be discovered, which would enhance market integrity. While IIROC has a whistleblowing program, it does not appear to be operational/effective. The Board may wish to review the current program in light of well publicized OSC and SEC successes.

SUMMATION

I believe that robust enforcement is a core element of an effective investor protection framework and essential to the securities regulatory structure. Contraventions (Misconduct) should have a bright light shone upon it -expediency and "efficiency" should not dominate IIROC enforcement strategy. Otherwise, confidence in our markets is undermined and investor protection is compromised. A robust enforcement program should be based on both preventative and remedial measures. I believe that the IIROC can and should do more in this area to advance investor interests via compensation.

I hope that any additional revenue received by IIROC from these proposals will be used to improve retail investor education, effect empirical investor research and provide financial support to investor advocacy groups like the Small Investor Protection Association and FAIR Canada.

I hope the IIROC finds these comments helpful and that they are fully and properly considered and addressed as the Board proceeds with this rulemaking.

I understand this letter will be published on IIROC's website and I agree to such posting.

Sincerely,

Martyn Cooke