

Appendix D – Response to Public Comments



Comments Received in Response to Rules Notice 18-0045 – Rules Notice – Request for Comments – Dealer Member Rules and UMIR – Enforcement Alternative Forms of Disciplinary Action

On February 22, 2018, we issued [Notice 18-0045](#) requesting comments on two preliminary proposals for alternative forms of disciplinary action:

- (1) the Minor Contravention Program (the **MCP**), and
- (2) the use of Early Resolution Offers.

IIROC received [nine comment letters](#) from the following commenters:

Kenmar Associates
Investor Advisory Panel of the Ontario Securities Commission
Harold Geller of MBC Law Professional Corporation
The Canadian Advocacy Council for Canadian CFA Institute Societies
Assante Wealth Management
Yves Robillard of Miller Thomson LLP
Edward Jones
Canadian Foundation for Advancement of Investor Rights (FAIR)
Investment Industry Association of Canada (IIAC)

Copies of these comment letters are publicly available on IIROC's website (www.iiroc.ca). We also conducted roundtable discussion with these commenters in the summer of 2018. The comments we received in the comment letters and through our discussions, and our responses to them, are summarized in the table below.

Summary of Comment	IIROC Response and Additional IIROC Commentary
General Comments	
Overall, commenters expressed support for the proposed alternative forms of disciplinary action and welcomed public consultation.	Thank you for your comments. We value input from our stakeholders as it assists us in developing appropriate solutions.
Several commenters felt that we should have provided more details and statistics on the effectiveness of the comparable regulatory programs we reviewed ¹ and the potential impact of the MCP on the number of disciplinary proceedings.	<p>We will only be able to measure the effectiveness of the MCP after it has been implemented for a period of time. As set out in our Three-Year Strategic Plan, we are committed to expanding our portfolio of enforcement options to help us address wrongdoing in a fair and proportionate manner.</p> <p>We intend to provide more detailed statistics on the outcomes of enforcement matters, including publishing the number of matters closed (a) with Cautionary Letters, (b) through the MCP, and (c) through formal disciplinary proceedings. In addition, for each matter resolved by MCP, we will publish a summary of the facts and IIROC requirements contravened.</p> <p>We provided key information on the comparable regulatory programs reviewed in</p>

¹ See Schedule A of [Notice 18-0045](#).

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	<p>Schedule A of Notice 18-0045. In advance of applying the MCP criteria to actual cases being investigated, it is difficult to determine how the program might impact the number of enforcement cases. In our view, any attempt to quantify an answer would be speculative and not a useful basis for determining whether to initiate the program.</p>
<p>Minor Contravention Program</p>	
<p>General Comments</p>	
<p>Several commenters expressed support for the MCP and agreed that it would be beneficial as providing a more effective option than a Cautionary Letter without the costs and impacts of full disciplinary proceedings.</p>	<p>Thank you for your comments.</p>
<p>Some commenters expressed concern that matters currently addressed by Cautionary Letter will be diverted to the MCP.</p>	<p>The MCP is not intended to take the place of Cautionary Letters or formal disciplinary proceedings but to allow Staff to address contraventions efficiently that warrant a more meaningful regulatory response than a Cautionary Letter, but do not warrant the resources and costs associated with a formal disciplinary proceeding.</p> <p>The MCP is an alternative measure that falls between Cautionary Letters and formal disciplinary proceedings. The MCP's features, such as a fixed fine and admission of contravention, serve as a greater deterrent</p>

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	<p>than a Cautionary Letter but its non-public feature recognizes that the nature of the violation(s) does not warrant a formal disciplinary proceeding.</p> <p>Overall, we expect that, under the MCP, matters will be handled more efficiently and proportionately.</p>
<p>Several commenters requested examples of cases that would be resolved by way of the MCP to assist them in determining their support for the program.</p>	<p>We believe the criteria set out in section 1.6 of Notice 18-0045 provides sufficient guidance as to the matters Enforcement Staff (Staff) would determine suitable for the MCP. Setting out specific examples is in our view too prescriptive and undermines the more principled approach of this program. In addition, we have revised the MCP proposal to provide for an independent review on Staff's exercise of discretion in selecting any given case by requiring MCP matters to be accepted by a public member of the IIROC hearing committee.</p>
<p><u>Admission and Disciplinary Record</u></p>	

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<p>Several commenters agreed that an admission of wrongdoing should be required under the MCP and be admissible in any further regulatory proceeding.</p>	<p>Thank you for your comments.</p>
<p>Some commenters expressed concern about the potential impact an admission might have on an Approved Person’s future employment and standing with other professional regulatory bodies. These commenters queried whether the admission would have to be disclosed as a “disciplinary proceeding” for the purposes of National Instrument 33-109 <i>Registration Information (NI 33-109)</i> and on an Approved Person’s Form 33-109F4. Commenters also expressed concern about how the admission could be used in a future civil proceeding.</p>	<p>In our view, requiring an admission is a critical component of the MCP. Staff intend to rely on such admissions in any future disciplinary proceeding against an Approved Person, if warranted, as an aggravating factor.</p> <p>We propose that matters resolved by way of the MCP would not be disclosed as a “disciplinary proceeding” for purposes of NI 33-109 or on an Approved Person’s Form 33-109F4. However, the Canadian securities administrators and other Canadian self-regulatory organizations would have access to MCP information.</p> <p>The matters Staff intends to resolve by MCP, and the corresponding admissions by Approved Persons, would be restricted to isolated incidents resulting in limited or no harm to clients or other market participants. As such, these matters are less likely to be the subject of civil proceedings.</p>
<p><u>Application to Dealer Member Firms</u></p>	

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<p>Commenters were divided on whether the MCP should apply to Dealers (as opposed to only Approved Persons).</p>	<p>In Notice 18-0045, we stated that the MCP “would be more applicable and relevant to cases involving individual misconduct.” After considering the comments we received, we decided to limit the application of the MCP to Approved Persons. This will allow us to measure the effectiveness of the MCP on a more limited basis and to assess in the future the potential application of the program to Dealers.</p>
<p><u>Fixed Fines of \$2,500 for Approved Persons and \$5,000 for Dealer Members</u></p>	
<p>Generally, commenters agreed that a fixed fine was appropriate to promote efficiency and certainty.</p>	<p>Thank you for your comments.</p>
<p>One commenter thought the fine should not be fixed in order to allow for negotiation and flexibility.</p>	<p>We continue to believe that the fine should be a fixed amount. The nature of the cases that will be resolved through the MCP do not warrant extensive negotiation or consideration of the quantum of the fine.</p>
<p>Several commenters argued the proposed fine was too low for both Approved Persons and Dealers.</p>	<p>We reconsidered the quantum of the fine and propose to increase the fine imposed on Approved Persons from \$2,500 to \$5,000 to increase its deterrent impact. The fine would still represent a discount to the majority of</p>

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	<p>finances imposed after a settlement or formal disciplinary proceeding.</p> <p>Matters involving Dealers would not be resolved through the MCP at this time.</p>
<p><u>Public Notice of MCP matters without identifying the Approved Person or Dealer</u></p>	
<p>Four commenters disagreed with not publicly naming Approved Persons, and their Dealers, who are respondents in MCP proceedings. Two commenters were supportive of the confidential nature of the MCP. One commenter supported the anonymity of individuals but argued the Dealer involved should be named publicly.</p>	<p>We recognize the importance of transparency in meeting our public interest mandate. However, there are often other equally important considerations which justify some limitations on full transparency. For example, IIROC rules allow for hearings, or parts thereof, to be conducted in-camera. In proposing the MCP, we want to sufficiently incentivize subjects of investigations to enter into a minor contravention agreement that would allow us to realize efficiencies in addressing matters.</p> <p>Moreover, the contraventions addressed through the MCP will be minor in nature and limited in scope. Minor contravention agreements will have a greater deterrent impact than a Cautionary Letter, but like a Cautionary Letter should be kept confidential in order to efficiently address cases that are minor in scope. We believe the publication of MCP cases would have a disproportionate</p>

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	impact on Approved Persons given the minor nature of the contravention.
Miscellaneous Comments	
<p>Two commenters expressed concern that the MCP could discourage the imposition of internal discipline by Dealers. The commenters suggested we consider Dealers’ internal discipline measures before proceeding with a case under the MCP.</p>	<p>We encourage Dealers to conduct internal discipline to effectively address the conduct of its Approved Persons and to foster a culture of compliance.</p> <p>Staff, as set out in our Staff Policy Statement on Internal Discipline, will consider internal discipline measures when seeking sanctions in disciplinary proceedings.</p> <p>We will also consider internal discipline measures when determining how to resolve a matter.</p>
<p>Several commenters suggested we run the MCP as a pilot project to gauge its effectiveness prior to implementation.</p>	<p>In light of our view that rule amendments are required to adopt the MCP, a pilot project is not feasible. As set out above, we will measure the effectiveness of the program on a regular basis and Staff will evaluate decisions to resolve cases by way of the MCP, settlement agreements or formal disciplinary proceedings.</p>
Early Resolution Offers	
General Comments	

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<p>Commenters were generally supportive of Early Resolution Offers and had more general comments and/or questions rather than specific concerns.</p>	<p>We believe that certain cases should be resolved more quickly. Early Resolution Offers are intended to facilitate this goal, which would result in a better resource allocation. We are mindful that any resolution should still meet the sanctioning principles of general and specific deterrence.</p>
<p><u>Compensation, disgorgement, and remedial measures</u></p>	
<p>One commenter thought any Early Resolution Offer should include remedial measures and compensation as a mandatory component.</p>	<p>In cases of client losses or financial benefit to Approved Persons or Dealers, the respondent would be required compensate clients or disgorge their financial benefit for Staff to make an Early Resolution Offer.</p> <p>Where the case involves conduct requiring remedial measures, Staff will consider the remedial measures taken when determining to make an Early Resolution Offer.</p>
<p><u>Credit for Early Resolution</u></p>	
<p>Several commenters thought there should a significant fine discount for early resolution of a matter, including an articulation of the amount that would be discounted. One commenter recommended that failure to accept an Early Resolution Offer should result in the offer and terms no longer being available.</p>	<p>Our proposed Early Resolution Offer program includes a specific reduction (or credit) in the sanctions Staff will seek. We agree that, if Staff make an Early Resolution Offer, the terms of that offer will not be available after the 30-day expiry period.</p>

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	<p>The only comparable regulatory program to the Early Resolution Offers we identified was the settlement discount regime offered by the United Kingdom’s Financial Conduct Authority (the FCA). The FCA provides for early resolution of all matters with a discount of 30% at “stage 1”, which is when the FCA has a sufficient understanding of the case to make a reasonable assessment of the appropriate sanction.</p> <p>We agree that specifying the amount of credit Staff will give, as the FCA does, will promote earlier resolutions and ensure transparency.</p>
<u>Miscellaneous</u>	
<p>Several commenters reiterated that, without data on the impact and greater detail about other possible tools, they had reservations about the proposal or could not assess its effectiveness.</p>	<p>Staff will clearly state in our public notices and in our settlement agreements when a matter has been resolved by an Early Resolution Offer. We will consider whether to provide annual statistics on Early Resolution Offers.</p> <p>Early resolution and settlement with credit provided is a common feature of most, if not all, prosecution units. We are proposing the Staff Policy Statement for transparency to respondents, the public and other</p>

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	stakeholders on why and how credit is granted pursuant to an Early Resolution Offer.